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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and NEW RULE II pertaining to early literacy targeted intervention programs	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 4, 2024, at 10:00 a.m., the Board of Public Education (board) will hold a public hearing in Room 152 of the Montana State Capitol in Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on December 22, 2023, to advise us of the nature of the accommodation that you need. Please contact McCall Flynn, Executive Director, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0300; or e-mail mflynn@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I EVALUATION METHODOLOGY FOR EARLY LITERACY TARGETED INTERVENTIONS (1) The local board of trustees shall adopt and ensure use of an evaluation methodology to identify, enroll, and admit children to early literacy targeted interventions. The evaluation methodology used must be overseen by and include application of professional judgment of qualified employees. A child may not be evaluated for the purposes of these interventions unless requested by the child's parent or guardian. The district must maintain evidence of the request. The evaluation methodology may be administered in April, May, or June, and must assess at least one of the following literacy skills:

(a) For four-year-olds:
(i) oral language;
(ii) phonological awareness;
(iii) alphabet knowledge.
(b) Prior to kindergarten:
(i) oral language;
(ii) phonological awareness;
(iii) alphabet knowledge.
(c) Prior to first grade:
(i) phoneme awareness;
(ii) listening comprehension;
(iii) developmental spelling;
(iv) vocabulary (expressive or receptive);
(v) word reading (nonsense or real);

(vi) reading composite.

(d) Prior to second grade:

(i) listening comprehension;

(ii) developmental spelling;

(iii) vocabulary (expressive or receptive);

(iv) word reading (nonsense or real);

(v) connected text reading fluency;

(vi) connected text accuracy;

(vii) reading composite.

(e) Prior to third grade:

(i) developmental spelling;

(ii) vocabulary (expressive or receptive);

(iii) word reading (nonsense or real);

(iv) connected text reading fluency;

(v) connected text accuracy;

(vi) reading comprehension;

(vii) reading composite.

(2) The list of approved evaluation methodology screening tools must be reviewed in odd years through a process of review complying with the provisions of Title 2, chapter 3, MCA, to ensure continuous adherence to developmentally appropriate and research-based screening tool requirements. Any changes to the list must be published and made publicly available by the Board of Public Education no later than 30 days after adoption of any changes. The removal of an evaluation methodology screening tool shall not be effective until July 1 following such removal.

(3) A local board of trustees adopting and using one of the approved evaluation methodology screening tools shall be construed to have complied with this rule.

(a) Use of one of the approved evaluation methodology screening tools shall not, however, be required, provided that the district's adopted evaluation methodology screening tool conforms to the requirements of (1).

(4) For the purposes of this rule, "evaluation methodology" means an age-appropriate research-based methodology, instrument, or assessment selected by the Board of Public Education to determine, based on a child's age or grade level, whether the child is above, at, or below a developmental trajectory leading to reading proficiency on completion of third grade.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-1803, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-7-1803, MCA

NEW RULE II JUMPSTART PROGRAM FRAMEWORK FOR EARLY LITERACY TARGETED INTERVENTION (1) The local board of trustees may offer a jumpstart program to support early literacy targeted intervention based on evaluation methodology identified in [NEW RULE I] as aligned to the Montana Early Childhood Education Standards and the Montana Content Standards for English Language Arts and Literacy.

(2) The jumpstart program must be overseen by and include application of professional judgment of qualified employees and must be designed in a manner to

increase the likelihood of a child being evaluated at the end of the ensuing school year to be at or above a trajectory leading to reading proficiency at the end of third grade.

(3) For the purposes of this rule, "jumpstart program" means a program that is at least four weeks in duration and provides at least 120 instructional hours and takes place during the time between the end of one school calendar year and the start of the next school calendar year, as determined by the trustees, preceding a child's entry into kindergarten, first grade, second grade, or third grade.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-1803, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-7-1803, MCA

REASON: The board proposes to adopt NEW RULE I and NEW RULE II to comply with HB 352 (2023). The Early Literacy Advisory Council, created by the Board of Public Education, recommended the proposed evaluation methodology and jumpstart program framework to address the purposes of the legislation to provide parents with voluntary early literacy interventions for their children, increase the number of children who are reading proficient at the end of third grade, and foster a strong economic return for the state on early literacy investments. NEW RULE I will be adopted as ARM 10.54.901 and NEW RULE II will be adopted as ARM 10.54.902, and they will be located in a new subchapter named "Early Literacy Targeted Interventions."

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: McCall Flynn, Executive Director, Board of Public Education, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620; telephone (406) 444-0300; or e-mail mflynn@mt.gov, and must be received no later than 5:00 p.m., January 7, 2024.

5. McCall Flynn, executive director, Board of Public Education, has been designated to preside over and conduct this hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on November 7, 2023.

9. With regard to the requirements of 2-4-111, MCA, the Board has determined that amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ McCall Flynn
McCall Flynn
Executive Director
Board of Public Education

/s/ Tim Tharp
Tim Tharp
Chair
Board of Public Education

Certified to the Secretary of State November 28, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.74.350, 17.74.351, 17.74.352, 17.74.353, 17.74.354, 17.74.355, 17.74.356, 17.74.357, 17.74.358, 17.74.359, 17.74.360, 17.74.362, 17.74.363, 17.74.364, 17.74.365, 17.74.366, 17.74.367, 17.74.368, 17.74.369, and 17.74.409 and the repeal of ARM 17.74.343, 17.74.370, 17.74.371, and 17.74.372 pertaining to incorporation by reference, asbestos project permitting and management, and training and accreditation of asbestos-related occupations	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL (ASBESTOS)

TO: All Concerned Persons

1. On January 11, 2024, at 1:00 p.m., the Department of Environmental Quality (department) will hold an in-person public hearing in Room 111 of the Metcalf Building, at 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. Interested parties may also attend the hearing electronically in the following ways:

https://mt-gov.zoom.us/j/89460669380?pwd=TlplQzNScEJvZXQ5NW1jKzVQc0JvQT09
Passcode: 991105
Or One tap mobile :
+12063379723,,89460669380#,,,,*991105# US (Seattle)
+12133388477,,89460669380#,,,,*991105# US (Los Angeles)
Or Telephone:
Dial (for higher quality, dial a number based on your current location):
+1 206 337 9723 US (Seattle)
+1 213 338 8477 US (Los Angeles)
+1 646 558 8656 US (New York)
Webinar ID: 894 6066 9380
Passcode: 991105
International numbers available: https://mt-gov.zoom.us/u/keAgMaTpKZ

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)
Meeting ID: 894 6066 9380
Passcode: 991105
SIP: 89460669380@zoomcrc.com
Passcode: 991105

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on January 2, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail at DEQAsbestosRule@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.74.350 INCORPORATION BY REFERENCE -- PUBLICATION DATES

(1) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, ~~2019~~ 2022, edition of the Code of Federal Regulations (CFR).

~~(2) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR may also be accessed electronically at: https://www.gpo.gov. Materials adopted and incorporated by reference in this subchapter are also available for public inspection and copying at DEQ, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.~~

AUTH: 75-2-503, MCA
IMP: 75-2-503 MCA

REASON: The department proposes to amend (1) to adopt the most current version of the CFR, maintaining parity with federal regulations. This allows the department to comply with 75-2-503(1), MCA; meet federal stringency requirements; and maintain the state program's EPA delegation.

Section (2) was added in 2020 as part of MAR Notice No. 17-410 to inform the public where it can access regulations incorporated by reference in this subchapter. However, ARM 17.74.351(2) already contains this information. Accordingly, (2) was unnecessarily added in 2020 and is proposed to be removed in this rulemaking.

17.74.351 INCORPORATION BY REFERENCE (1) ~~For the purposes of this subchapter~~ Except as provided otherwise in this subchapter, the department adopts and incorporates by reference:

(a) 40 CFR 61, subparts A and M, pertaining to national emission standards for hazardous air pollutants (NESHAPs) for asbestos~~, with the following exception:~~

~~(i) 40 CFR 61.145(a)(2) is not incorporated by reference.~~

(b) National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, ~~fourth~~ fifth edition, ~~August 1994~~ December 2017, which contains a description of the 7400 Analytical Method for detecting asbestos and other fibers by phase contrast microscopy (PCM) and a description of the 7402 Analytical Method for detecting asbestos by transmission electron microscopy (TEM); and

(c) remains the same.

(d) The following sections of 40 CFR 763 Asbestos Hazard Emergency Response Act (AHERA) Model Accreditation Plan (MAP) Appendix C to Subpart E:

(i) section B.1, Workers;

(ii) section B.2, Contractor Supervisor;

(iii) section B.3, Inspector;

(iv) section B.4, Management Planner; and

(v) section B.5, Project Designer.

(2) remains the same.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department proposes to amend (1) to generally note that exceptions to the incorporated material are specified elsewhere in this subchapter. The department is proposing to strike (1)(a)(i) as this exception to the federal asbestos NESHAP is addressed in ARM 17.74.353(1)(a) (permit requirements) and is not necessary here. The proposed amendments to (1)(b) would adopt the current version of the NIOSH Manual of Analytical Methods to maintain parity with federal regulations and to incorporate updates in the scientific process for analyzing asbestos fibers. The proposed inclusion of (1)(d) provides for the incorporation of materials currently referenced in ARM 17.74.365 under "training course requirements."

17.74.352 DEFINITIONS For purposes of this subchapter, unless otherwise provided, the following definitions apply. The terms must be used in conjunction with the definitions in 75-2-502, MCA, and 40 CFR 61.141:

~~(1) "Amended water" means water to which surfactant (wetting agent) has been added to increase the ability of the liquid to penetrate ACM.~~

(1) "Alternate work practice" means proposed alternative control measures, methods for clearing asbestos projects, or work methods other than those specified in this subchapter that are at least as stringent as the methods required in this subchapter.

(2) remains the same.

(3) "Approved asbestos disposal facility" or "disposal facility" means a licensed Class II or Class IV landfill as described in ARM 17.50.504.

(4) and (5) remain the same.

(6) "Asbestos contractor/supervisor" means an individual with the requisite training and credentials to supervise an asbestos project and the personnel conducting an asbestos project.

~~(6)~~(7) "Asbestos inspector" means ~~any person who~~ an individual with the requisite training and credentials to inspect~~s~~ a facility for the presence of asbestos-containing material.

~~(7)~~(8) "Asbestos management planner" means ~~any person who develops~~ an individual with the requisite training and credentials to develop plans for the management of asbestos-containing material under the Asbestos Hazard Emergency Response Act.

~~(8) "Asbestos project" has the meaning given in 75-2-502(3), MCA. "Pipe," as the term is used in this definition and 75-2-502(3), MCA, includes any coating or wrap made of regulated asbestos-containing material that partially or wholly covers the inner or outer surface of the pipe.~~

(9) remains the same.

~~(10) "Asbestos project contractor/supervisor" means any person who supervises asbestos projects and the personnel who conduct asbestos projects.~~

~~(11)~~(10) "Asbestos project designer" means ~~a person who develops~~ an individual with the requisite training and credentials to develop the plans, specifications, and/or designs for an asbestos project.

~~(12) "Asbestos project worker" means any person other than those listed in (6) and (8) through (10) who is engaged in an asbestos project, and who encapsulates, encloses, removes, repairs, renovates, places in new construction, or demolishes asbestos, or transports or disposes of asbestos-containing wastes.~~

~~(13) "Asbestos-related occupation" has the meaning given in 75-2-502(4), MCA.~~

(14) remains the same but is renumbered (11).

(12) "Asbestos worker" means an individual with the requisite training and credentials to handle asbestos-containing materials during an asbestos project.

~~(15) "Background level" means:~~

~~(a) the concentration of asbestos in a comparable environmental setting at or near an asbestos project site; or~~

~~(b) the concentration of asbestos that provides a defensible reference point to evaluate whether or not a release at the asbestos project site has occurred.~~

(16) and (17) remain the same, but are renumbered (13) and (14).

~~(18) "Demolition" has the meaning given in 40 CFR 61.141.~~

~~(19) "Department", as defined in 75-2-502(5), MCA, means the Department of Environmental Quality, provided for in 2-15-3501, MCA.~~

~~(20) "Emergency renovation operation" has the meaning given in 40 CFR 61.141.~~

~~(21) "Encapsulation" means the treatment of ACM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant). This definition does not include the repainting of a previously painted and undamaged ACM surface primarily to improve the appearance of the surface.~~

~~(22) "Enclosure" means an airtight, impermeable, permanent barrier around ACM to prevent the release of asbestos fibers into the air.~~

~~(23) "Engaged in an asbestos-related occupation" means:~~

~~(a) conducting an asbestos inspection pursuant to ARM 17.74.354;~~

~~(b) creating a project design pursuant to ARM 17.74.355; or~~

~~(c) engaged in any activity for which an asbestos project permit is required under this subchapter.~~

~~(24) "Facility" has the meaning given in 40 CFR 61.141.~~

(25) remains the same, but is renumbered (15).

~~(26) "Glove bag" has the meaning given in 40 CFR 61.141.~~

(27) remains the same, but is renumbered (16).

~~(28)~~(17) "Inspection" means an activity undertaken ~~in~~ at a facility to determine the presence, ~~or~~ location, and quantities, or to assess the condition, of ACM or suspected ACM, whether by visual or physical examination, or by collecting samples of the material. This term includes reinspections of known or assumed ACM which has been previously identified. The term does not include the following:

(a) and (b) remain the same.

(29) and (30) remain the same, but are renumbered (18) and (19).

~~(31) "Person" has the meaning given in 75-2-502(6), MCA.~~

~~(32) "Regulated asbestos-containing material (RACM)" has the meaning given in 40 CFR 61.141.~~

~~(33) "Renovation" has the meaning given in 40 CFR 61.141.~~

~~(34) "Repair" means returning damaged RACM to an undamaged condition or to an intact state so as to prevent fiber release.~~

(20) "Owner or operator" has the meaning given for "owner or operator of a renovation or demolition activity" in 40 CFR 61.141.

(21) "Pipe," as the term is used in this subchapter and 75-2-502(3), MCA, includes any coating or wrap made of regulated asbestos-containing material that partially or wholly covers the inner or outer surface of the pipe.

(22) "Project design" means a site-specific written plan including specifications, project procedures, containment design/placement, and descriptions of engineering controls that detail the handling of asbestos-containing material during an asbestos project.

(35) remains the same, but is renumbered (23).

~~(36) "Structural member" has the meaning given in 40 CFR 61.141.~~

(37) remains the same, but is renumbered (24).

~~(38)~~(25) "Thoroughly inspect" means to conduct a facility demolition-specific or renovation-specific asbestos inspection, pursuant to ARM 17.74.354, for the purposes of:

(a) identifying all ACM that ~~potentially~~ may be impacted by the subsequent renovation or demolition; and

(b) remains the same.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department is proposing to refine much of the definitions rule, stressing that defined terms in 75-2-502, MCA, and 40 CFR part 61.141 likewise apply to this subchapter.

The department proposes the removal of "asbestos project," "asbestos-related occupation," demolition," "department," "emergency renovation operation," "facility," "glove bag," "person," "regulated asbestos containing material," renovation," and "structural member," as those terms are already defined within statute or regulations incorporated by reference.

The department proposes to remove the definitions of "amended water," "background level," "encapsulation," "enclosure," and "repair", as those terms are used only in rules that the department is proposing to repeal, making the definitions unnecessary.

The department proposes to delete the definition for the phrase "engaged in an asbestos-related occupation," because the current definition is not inclusive of all tasks undertaken by persons involved in an asbestos-related occupation and the definition is not necessary to implement this subchapter.

The department is proposing to amend the definitions for certain asbestos-related occupations (asbestos contractor/supervisor, asbestos inspector, asbestos management planner, and asbestos worker) in two ways. First, the department is proposing to remove the word "project" from the terms being defined (e.g., "asbestos project worker" will become "asbestos worker"). This change would align the terms with how the occupations are described in the Asbestos Control Act and federal regulations. Second, the department is proposing to amend the definitions of certain asbestos-related occupations to refer to the training and credentials required to be accredited in that occupation. This change aligns the terminology to reflect that found in the EPA's Model Accreditation Plan.

The department is proposing to add "alternate work practice" in (1) to properly define the term and its scope as it is used repeatedly in rule.

In (3), the department is proposing to add "or disposal facility" to the definition as this term is used synonymously with the defined term.

The department proposes to amend the definition of "inspection" in (17) to clean up the definition and to include reference to quantities in the definition, as inspections under ARM 17.74.354 require determination of quantities of ACM present.

The department proposes to define "owner and operator" in (20), to clearly connect the term to the definition in 40 CFR 61.141, as the full term is not used in the ARM.

The department proposes to make "pipe" its own definition in (21) as it remains useful in the rule and is not otherwise defined in the statute.

The department proposes to define "project design" in (22). ARM 17.74.355 requires a written project design be maintained on site during an asbestos project. In defining the term "project design," the department seeks to specify the information to be included in this document, to ensure a consistent application of the requirements in ARM 17.74.355.

The department proposes to remove "potentially" in (25)(a) to reduce redundancy.

17.74.353 APPLICABILITY--ASBESTOS PROJECT REQUIREMENTS

(1) All asbestos projects must be conducted in accordance with the requirements of this subchapter and 40 CFR 61, subparts A and M, with the following exceptions:

(a) remains the same.

(b) for purposes of 40 CFR 61.145(a)(1), (a)(2), and (a)(4), the minimum quantities of asbestos provided in 75-2-502(3), MCA, apply;

(c) in 40 CFR 61.145(b)(1), pertaining to notification requirements, "Provide the department with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, facsimile, email, the department online permitting system, or hand delivery is acceptable, and delivery of the notice is complete when the department receives the notice" and the appropriate fee as specified in ARM 17.74.406" is substituted for "Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable";

(d) remains the same.

(e) alternate work practices may be used if approved in writing by the department in advance. Requests for ~~approval to employ~~ alternate work practices must: ~~be submitted to the department on a form provided by the department.~~

(i) be submitted by the owner or operator on a form provided by the department and include the fee specified in ARM 17.74.406;

(ii) explain why compliance with this subchapter and 40 CFR 61, subpart M is neither practical or feasible; and

(iii) demonstrate that the proposed alternate work practice provides results at least as stringent as the methods required in this subchapter.

(2) remains the same.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department proposes to add subpart A in (1) to correct an inconsistency with ARM 17.74.351 and clarify the NESHAP General Conditions found within subpart A of 40 CFR part 61 apply to asbestos projects. The department proposes language within (1)(b) to reflect the precedence for statutory levels in Montana. The department proposes in (1)(c) to formalize the state online notification services by officially placing its use in rule. In (1)(e), the department is proposing to specify the requirements that must be met for an asbestos project contractor to use alternate work practices. These requirements are reasonably necessary to (a) ensure that alternate work practices are used only in situations where strict compliance with these rules is impractical and infeasible; and (b) establish that alternate work practices are at least as stringent as the requirements of this subchapter, in order to maintain compliance with the program delegation from EPA.

17.74.354 INSPECTION REQUIREMENTS FOR DEMOLITION AND RENOVATION ACTIVITIES (1) Prior to any demolition or renovation of a facility, the owner or operator shall ensure the facility or part of the facility where demolition

or renovation ~~actions~~ activity will occur is thoroughly inspected by a department-accredited asbestos inspector in accordance with this subchapter.

(2) The owner or operator shall ensure that a copy of the inspection report is kept on site during the asbestos project. The owner or operator shall ensure that the report is kept on site during subsequent renovations or demolition. The inspection report must be made available to the department upon request.

(3) A supplemental amendment or full reinspection is required prior to demolition or renovation activity under the following conditions:

(a) the initial inspection date is greater than three years prior to the initiation of an asbestos project;

(b) the scope of work at the inspected site has changed; or

(c) the inspection requirements under this rule have changed since the inspection report date.

~~(3)~~(4) A department-accredited asbestos inspector conducting an inspection in accordance with this subchapter shall:

(a) visually inspect the areas that may be affected to identify the locations and estimated quantities of all suspect ACM;

(b) and (c) remain the same.

(d) collect samples from thermal system insulation as follows:

(i) at least one bulk sample from each area of patched thermal system insulation that is less than six linear or square feet and is not assumed to be ACM;

(ii) at least three random bulk samples from each type of thermal system insulation that is greater than six linear or square feet and is not assumed to be ACM;

~~(iii) no bulk samples where the accredited inspector has determined that the thermal system insulation is fiberglass, foam, glass, rubber, or other non-ACM;~~

~~(e) randomly collect at least three bulk samples from all mechanical system insulation and fittings, such as tees, elbows, and valves, that are not assumed to be ACM;~~

~~(f)~~(e) randomly collect at least three bulk samples from each type of miscellaneous material that is not assumed to be ACM~~; and~~.

~~(g) collect at least three bulk samples from any type of non-friable suspected ACM that is not assumed to be ACM.~~

~~(4)~~(5) For inspections conducted under ~~(3)~~ this rule, the inspector shall ensure that:

(a) bulk samples are analyzed by persons or laboratories with proficiency demonstrated by current successful participation in a nationally recognized testing program such as the National Institute of Standards and Technology (NIST), National Voluntary Laboratory Accreditation Program (NVLAP), ~~the round robin for bulk samples administered by~~ the American Industrial Hygiene Association (AIHA), or an equivalent testing program accepted in writing by the department prior to analysis;

(b) ~~except for wallboard system samples,~~ bulk samples are not composited for analysis or during reporting, but are analyzed for asbestos content by polarized light microscopy (PLM) using the "Method for the Determination of Asbestos in Bulk Building Materials" (EPA/600/R-93/116) or another method acceptable to the department; and

(c) remains the same.

~~(5)~~(6) For the purposes of an inspection conducted under ~~(3)~~ this rule:

(a) all materials with the exception of glass, untreated wood, and metal are considered suspect ACM;

~~(a)~~(b) a material is ~~considered to be~~ ACM if the analytical results of at least one sample collected from that material show that asbestos is present in an amount greater than one percent; and

(b) remains the same, but is renumbered (c).

~~(6)~~(7) For inspections conducted under ~~(3)~~ this rule, the asbestos inspector shall report the findings in a written inspection report to the ~~owner of the building or the operator conducting the planned demolition or renovation activity~~ owner or operator. The asbestos inspection report must include:

(a) and (b) remain the same.

(c) the date of the asbestos inspection and final report;

(d) through (f) remain the same.

(g) all sample locations identified in sufficient detail to allow another individual to duplicate sampling;

(h) and (i) remain the same.

(j) a copy of the sample analytical report~~,~~ and the completed and signed chain of custody form; ~~specified in (4)(c), with the name and address of each laboratory performing an analysis, the date of analysis, and the name and signature of the person performing the analysis; and~~

(k) information on whether it will be necessary to remove any ACM before any activity begins that would break up, dislodge, or similarly disturb the material~~.~~; and

(l) a single page within the report containing items (a) through (e) and an indication of the presence of any regulated ACM, with a duplicate of that page included within the report.

~~(7)~~(8) If the inspection required in (1) was not conducted or was improperly conducted prior to commencement of renovation or demolition activities, an inspection must be conducted in accordance with ~~(3)~~ this rule as soon as possible upon discovery of the missing or improper inspection, and before any additional renovation or demolition activities occur, with the addition of the following:

(a) ~~industry-recognized procedures must be employed for sampling and analyzing settled dust to determine the extent of any asbestos contamination. The department will provide a list of acceptable procedures upon request;~~ dust samples must be collected to identify the presence and the extent of contamination at the time bulk samples are collected. If the results of bulk sample testing are positive for ACM, or if any suspect material known to have been at the site is unavailable for analysis, dust samples must be analyzed using current industry standards;

(b) remains the same.

(c) the department-accredited asbestos inspector shall summarize sampling and analytical procedures and evaluation findings in a written report. A recommendation on whether a new or continued asbestos project is necessary based on the evaluation must be included in the written report. The report must be submitted to the department for review and approval before any further renovation or

demolition work occurs. For emergency renovation operations, cleanup may commence upon submission of the report to the department.

~~(8)~~(9) The department may conduct its own asbestos inspection if it deems an inspection conducted under ~~(7)~~ (8) is deficient.

~~(9)~~(10) An inspection conducted under ~~(7)~~ (8) does not excuse any failure to complete the inspection required in (1).

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department is proposing to amend ARM 17.74.354 to address inspection requirements for demolition and renovation activities. The department proposes to change "action" to "activities" in (1) to be consistent with language throughout the rule and use language familiar to the asbestos industry.

In (2) the department proposes a similar change to include "operator" in conjunction with use of the term "owners," consistent with changes within definitions and throughout rule.

The department proposes adding (3) to clarify the requirement that the inspection report used by contractors represents the facility's current conditions and the condition of the materials. This amendment is necessary to address older inspections that may be subject to multiple variables, such as changes in rule, changes in the integrity of the building materials, changes in the quantity of the building materials, and are no longer compliant or suitable for their intended purpose. Supplemental inspection reports prevent unknown exposure to asbestos and ensure that facilities are "thoroughly inspected" as required in 40 CFR 61.145.

The department is proposing to add "and estimated quantities" to (4)(a) because this is an essential piece of information in determining the applicability of subsequent rule requirements. The department is proposing to add clarifying language to (4)(d)(i) to define the size of a "patched thermal system insulation" area. The department is proposing to strike (4)(d)(iii), as these materials are not found in ARM 17.74.354(6)(a) and require sampling to determine if asbestos is present. During the advanced draft stakeholder meetings there was concern raised that removing the exempt status of certain materials during sampling would exceed the standards found in other states. The overarching statement by the EPA in Applicability Determination A960025 regarding sampling of materials takes precedence here as well as in (6)(a). The department is proposing to strike (4)(e) and (4)(g) because they do not offer additional clarity to performance of a "thorough inspection" and are unnecessary. The department is proposing to strike language in (5)(a) as complying with quality assurance testing remains under the authority of the nationally recognized testing program.

The department is proposing to strike "except for wallboard system samples" from (5)(b), to remove any exception for composited analysis. This proposed change is necessary to formalize an existing department determination issued to stakeholders and that is posted on the department's website under the "Proposed Asbestos Rule Change" tab. The department's previous determination explained that although EPA guidance (ADI A960011) allows averaging and reporting of composite results for wallboard systems in certain circumstances, EPA's guidance

was not based on scientific evidence but was done for practical enforcement reasons based on the NESHAP regulatory threshold of 160 square feet. Because Montana's regulatory threshold, at 10 square feet, is much smaller than the federal threshold, DEQ does not exempt wallboard systems, where joint compound or tape is applied only to nail holes and joints, from the requirement to analyze and report results for each layer of a multilayered system. Formalizing this determination into the asbestos rules will ensure that all asbestos-containing material is appropriately handled in compliance with this subchapter.

In (6)(a), the department is proposing to add "with the exception of glass, untreated wood, and metal" to clarify that all other building materials are considered suspect for asbestos, consistent with EPA guidelines. During the advanced draft stakeholder meetings, the inclusion of fiberglass insulation as a suspect material was raised. On December 14, 2021, the department issued a determination that stated fiberglass "should not be excluded as a suspect material." The department's December 14, 2021, determination was based on the inspection requirements in the Asbestos Control Act and existing department rule, as well as an October 2021 determination by EPA finding that fiberglass is considered a suspect material. This determination was issued to stakeholders and has been posted on the program "regulatory determinations" portion of its website. This proposal seeks to formalize the existing December 14, 2021, determination into rule. In addition, the word "untreated" was added prior to "wood" based on advanced draft stakeholder meetings where it was suggested that the generic term "wood," when used alone, could be excessively broad, missing asbestos added during processing, and fail to provide for a "thorough inspection."

The department proposes to amend (7) to be clearer and more concise with the intent of inspection preparation. The department is proposing to add "and the date of the final report" to (7)(c) to require that the date of onsite activities and report completion are separate; this verifies accreditation and verifies the date of materials being observed. The department proposes adding language to (7)(g) to require an adequate description of the sampling location if an inspection must be repeated or verified. The department occasionally attempts to duplicate sample results, and this proposed change provides the best opportunity to achieve similar results. The department proposes to amend (7)(j) to include the completed chain of custody and delete the specified information listed as chain of custody forms already include that information. In (7)(l), the department proposes requiring the inspection report to contain certain information on a single page, and for there to be included within the report, a duplicate of that page so that one copy may be torn out and provided to the disposal facility where asbestos-contaminated waste is being disposed. Through stakeholder discussions and an Asbestos Advisory Group recommendation, the department believes that this process will allow for more efficient and accurate screening of asbestos-contaminated waste at disposal facilities. Based on advanced stakeholder comments, the department has revised this proposed rule so that the duplicate cover page needs only to be included with the report, as opposed to the initial proposal requiring the duplicate cover page at the beginning of the report.

The department is proposing to amend language in (8)(a) to specify that while doing the initial inspection, dust samples must be collected and analyzed if the rule

specifies. Dust sampling when no asbestos inspection was performed prior to demolition or renovation provides valuable information to the owner/operator. However, the follow-up activities recommended by the inspector or contractor to the owner/operator remain outside of the department's rulemaking authority. During advanced draft stakeholder meetings, at least one commenter expressed a desire for the department to quantify action levels to be taken at a site based on the dust sampling results. While the department has statutory authority for rulemaking regarding aspects of "Asbestos Projects," the presence of dust at a site can have many sources, many outside the regulatory authority of the department. Therefore, the department has not made any changes to the proposed language based on the advanced stakeholder comments.

In (8)(c), the department is proposing to add language to clarify that while the department must review and approve a report under this subsection, action required to clean the site under an emergency notification may proceed.

17.74.355 ASBESTOS PROJECT PERMITS AND DEMOLITION NOTIFICATIONS (1) Pursuant to 40 CFR 61.145, a person may not conduct demolition activities without a demolition notification submitted to the department.

(1) remains the same, but is renumbered (2).

~~(2)~~(3) The ~~asbestos project contractor or the owner or operator of the facility where an asbestos project is to be conducted~~ owner or operator shall submit to the department~~, on a form provided by the department, an application for a project permit that contains the following~~:

(a) a completed, signed Montana Asbestos Project Permit Application, Transport and Disposal application, ~~and~~ or ~~NESHAP Demolition/Renovation Notification~~ Montana Demolition Notification on a form provided by the department; and

(b) the ~~permit~~ applicable fee required under ARM ~~17.74.401~~ 17.74.406.

(4) An application for an asbestos project permit and associated fees must be received by the department at least:

(a) five working days prior to the initiation of an asbestos project with quantities pursuant to 75-2-505(1) through (3), MCA; or

(b) ten working days prior to initiating an asbestos project with quantities pursuant to 40 CFR 61.145(a) or the initiation of demolition activities.

(5) False, inaccurate, or misleading information may cause the department to revoke an asbestos project permit or demolition notification.

~~(3)~~(6) If an application submitted under this rule is ~~deficient or~~ incomplete, the department shall notify the applicant in writing of the information necessary to complete the application. If the department has not received the information within ~~ten~~ two days from the date of the written notice ~~deficiency letter~~, the application will be considered withdrawn.

~~(4) If the dates during which an asbestos project is to be conducted change, the asbestos project contractor/supervisor, or the owner or operator shall notify the department of the change at least 24 hours prior to:~~

~~(a) implementation of the new scheduled date; or~~

~~(b) the original scheduled date, whichever comes first.~~

~~(5) Within 72 hours after any initial verbal notice to the department of a change in the dates during which an asbestos project is to be performed, the permittee shall submit to the department a signed, original written notice of the newly scheduled dates, using an application form provided by the department. If the new dates are substantially different from those specified in the permit, the department may require the permittee to apply for an amendment to the permit.~~

~~(6) The department shall issue asbestos project permits for asbestos projects having a cost of $3,000 or less within seven calendar days following the receipt of a properly completed permit application and the appropriate fee.~~

(7) A revision of an asbestos project permit or demolition notice is required as soon as possible and must be submitted to the department with any necessary fees under ARM 17.74.406 for the following:

(a) a change in the project's owner or operator;

(b) a change in the renovation contractor, transporter, or disposal facility;

(c) the amount of regulated asbestos-containing material being disturbed changes by at least 20 percent or more from the amount permitted;

(d) any significant change in the scope of work of the asbestos project conducted at the facility during the project period; or

(e) a change to the start or completion date for a permitted activity provided that the conditions of 40 CFR 61.145(b) are met for changes in start dates.

(8) Expired asbestos project permits or expired demolition notifications are void. Any work beyond the expiration date will require a new asbestos project permit or demolition notification pursuant to the requirements of this subchapter.

~~(7)~~(9) A copy of the ~~asbestos project permit application,~~ issued permit, project design, and sketch must be posted and maintained on site ~~in a conspicuous location~~ during the asbestos project and made available for examination by department employees or representatives upon request.

~~(8)~~(10) For an asbestos project limited to transportation and disposal, the ~~posting of the project sketch required in (7) does not apply.~~ issued permit must be available with the material being transported.

AUTH: 75-2-503, MCA
IMP: 75-2-503, 75-2-505, 75-2-511, MCA

REASON: The department is proposing several amendments to ARM 17.74.355 to refine the department's requirements pertaining to permits issued by the agency. The department is proposing to add "demolition" to the title of the rule to identify that demolition notifications are subject to many of the same requirements as traditional asbestos project permits. Likewise, the department is proposing to add specific language in (1) regarding the submission of demolition notifications to the department as is required under 40 CFR 61.145. The department has proposed streamlined language in (3), consistent with the proposed amendments to definitions and fee rules updated in 2020. In addition, the department proposes to specifically identify the availability of a Montana Transport and Disposal permit as a type of asbestos project permit. Transport and disposal of asbestos-containing waste requires permitting under 75-2-502, MCA, even in cases where asbestos removal does not require a permit.

The department is proposing (4) to clearly identify in one location the different advance notice requirements that are otherwise found in statute or incorporated federal regulations.

The department is proposing (5) to specify the circumstances under which incorrect information provided by an applicant may cause the department to revoke an asbestos project permit.

The department proposes to reduce redundancy in (6) by removing the word "deficient." The department is also proposing to change "ten days" to "two working days" for the timeframe for an applicant to provide requested missing information. This prevents a backup of permits awaiting administrative review and decreases review time.

In (7), the department is proposing to identify the circumstances requiring a revision to an asbestos project permit, reducing confusion on the situations that require additional department activity.

In (8), the department proposes to specifically stress that project activity must cease upon permit expiration and to describe the process to be followed if additional activity requiring a permit is desired.

The department is proposing to delete current (6), as this information is in 75-2-503, MCA, and does not need to be repeated in rule.

The department proposes to amend the text of both (9) and (10) to streamline the on-site paperwork requirements for contractors.

17.74.356 ASBESTOS PROJECT CONTROL MEASURES (1) An asbestos ~~project~~ contractor/supervisor shall be:

(a) physically present at all times at the work site when ~~regulated~~ permitted work is being conducted on an asbestos project;

(b) accessible to all asbestos ~~project~~ workers; and

(c) remains the same.

(2) Alternate control measures that are equivalent to those required under this subchapter may be used if written approval is obtained from the department in advance pursuant to ARM 17.74.353.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: In (1) and (1)(b) the department proposes to remove "project" to align with changes in definitions and provide consistency throughout the rule. The department proposes to revise (1)(a) to remove language associated with regulations outside department scope, and replace with language regarding activity at sites permitted by the department. In (2), the department proposes to add a reference to ARM 17.74.353, which contains the requirements for obtaining department approval of alternate work practices.

17.74.357 STANDARDS AND METHODS FOR CLEARING ASBESTOS PROJECTS AND REQUIREMENTS FOR PERSONS CLEARING ASBESTOS PROJECTS (1) At the conclusion of any asbestos project conducted in a facility, the owner ~~of the facility or the owner's designee~~ or operator shall ensure that final

visual inspection and air clearance sampling are conducted in all asbestos project work areas prior to expiration of the asbestos project permit.

(2) The concentration of asbestos fibers in air clearance samples collected pursuant to (1) must be:

(a) less than or equal to 0.01 fibers per cubic centimeter of air for each ~~of five samples~~ sample collected within the work area, ~~if~~ when analyzed by ~~PCM. The PCM analysis must be conducted~~ Phase Contrast Microscopy (PCM) using the NIOSH 7400 or NIOSH 7402 method; or

(b) less than or equal to ~~the average concentration of~~ 70 structures per square millimeter for ~~five samples~~ each sample collected within the work area, ~~if~~ when analyzed by ~~transmission electron microscopy~~ Transmission Electron Microscopy (TEM)~~. The TEM analysis must be conducted~~ using EPA's interim TEM analytical methods provided in 40 CFR 763, subpart E, appendix A.

(3) Final visual inspection and clearance sampling and analysis must be conducted as follows:

(a) remains the same.

(b) a person collecting final air clearance samples shall:

(i) and (ii) remain the same.

(iii) ensure the air is continually agitated~~, creating maximum air disturbance in all potentially occupied areas, i.e., continually running fans, during the collection of final air clearance samples.~~ in all potentially occupied areas, utilizing one 20-inch box fan or its cubic feet per minute equivalent per 10,000 cubic feet of work area, to create maximum air disturbance. Agitating the air in the work area prior to final air clearance sampling is not required for unoccupied areas such as crawl spaces; and

(iv) remains the same.

~~(c) for an asbestos project with more than a single isolated work area within a large space contained by four walls and a ceiling, the owner or operator of a renovation or demolition activity shall ensure the isolated work areas are sampled by taking at least one air sample within each isolated work area. If more than five isolated work areas are used in a space contained by four walls and a ceiling, at least five aggressive air samples must be collected. The first four air samples must be gathered from those isolated work areas where the greatest potential for asbestos exposure exists; the fifth sample must be taken in the last isolated work area in which the asbestos project occurred;~~

~~(d) for asbestos projects employing glovebags, the owner or operator of the renovation or demolition activity shall have at least one aggressive air sample collected in the immediate area of each glovebag, with at least five air samples collected for each space contained by four walls and a ceiling. If more than five glovebags are used in a space contained by four walls and a ceiling, at least five air samples are required for that space. The five samples must be gathered from areas where the greatest potential for asbestos exposure exists;~~

~~(e)~~(c) the asbestos project may not be ~~cleared~~ approved for general re-occupancy until after the final visual inspection and after the results of all required air clearance samples demonstrate that asbestos concentrations do not exceed the applicable concentration specified in (2);

~~(f)~~(d) persons conducting a final visual inspection and final air clearance sampling and testing shall record and include in a final written report:

(i) the names of the asbestos ~~project~~ contractor/supervisor supervising the permitted activity and the person or persons conducting final visual inspection and final air clearance sampling;

(ii) through (v) remain the same.

(vi) the number of samples collected, identified in sufficient detail to allow another individual to perform duplicate sampling;

(vii) the laboratory analytical method used ~~type of samples (i.e., PCM or TEM)~~;

(viii) the pump flow rate (pre, post, and average), run time, total volume of air, calculations for PCM or for TEM, and laboratory analytical report; and

(viii) remains the same, but is renumbered (ix).

(g) remains the same, but is renumbered (e).

~~(h)~~(f) the results of the final visual inspection and final air clearance sampling and testing must be maintained by the ~~asbestos project contractor~~ owner or operator and by the person who performed the sampling and must be made available to the department ~~within five working days of a request for the results~~ upon request.

(4) For asbestos projects with final air clearance sampling, the person conducting final air clearance sampling shall:

(a) collect air samples, representative of the entire work area, in accordance with the NIOSH 7400 method for PCM samples or NIOSH 7402 for TEM samples ~~five samples of air, with each sampling at least 1,199 liters of air, by using an air sampling pump capable of drawing a volume that is equal to or greater than 1,199 liters of air through each of the five millimeter filters, at a rate equal to or greater than one liter and less than ten liters per minute for TEM samples and equal to or greater than one liter and less than 16 liters per minute for PCM samples~~;

(b) remains the same.

(c) ensure air sampling cassettes are placed four to six feet above the floor at a 45 degree angle down. ~~The cassettes must be uniformly distributed throughout the work area. At least one cassette must be located in each room. If the asbestos project was conducted in more than five rooms, a representative sample of rooms must be selected.~~ Each cassette must be subject to normal air circulation, avoiding room corners, walls, ceilings, obstructed locations, and sites near windows, doors, or vents.

~~(5) If the background level of asbestos, as identified by the thorough inspection required in ARM 17.74.354(1), is determined to exceed the maximum allowable concentration in (2), the department may issue a written waiver from (3)(e) upon receipt of a written request in advance of the asbestos project.~~

~~(6)~~(5) An asbestos project is considered ~~complete~~ approved for general re-occupancy when the final visual inspection documents no residual visible ACM, dust, or debris is present, and the results of clearance air sampling meet the requirements of (2).

~~(7) Air samples required by this rule may be analyzed only by laboratories accredited by the American Industrial Hygiene Association (AIHA) or laboratories that participate in the AIHA proficiency analytical testing (PAT) program and that have received a "proficient" rating for asbestos PCM samples, or another laboratory accepted in writing by the department. For sampling and sample analysis, a quality assurance program must be implemented as described in the NIOSH 7400 method~~

~~or another quality assurance program accepted in writing by the department. PAT results must be submitted to the department upon request.~~

~~(8) PCM analyses required by this rule may be conducted only by a person certified in the NIOSH 582 or 582E sample collection and analytical method and who participates in a round robin quality assurance/quality control program for PCM analysts or another certification or quality assurance/quality control program accepted in writing by the department in advance.~~

(6) PCM samples required under this rule shall be analyzed by a laboratory certified in the NIOSH 582 or 582e and that maintains a "proficient" rating in the American Industrial Hygiene Association (AIHA) proficiency analytical testing (PAT) program. PAT results must be submitted to the department upon request. The department must approve alternate proficiency programs prior to the analysis of PCM samples.

(9) remains the same, but is renumbered (7).

~~(10) Proposed alternate standards and methods for clearing asbestos projects that provide results at least as accurate as the standards and methods set forth in (1) through (9) may be used if approved in advance by the department in writing. Requests for approval to employ alternate standards and methods must be submitted in advance to the department on a form provided by the department.~~

(8) Alternate work practices for clearing asbestos projects may be used if approved in writing by the department in advance. Requests to employ alternate work practices must be submitted to the department in accordance with ARM 17.74.353(1)(e).

~~(11)~~(9) A person performing a final visual inspection and final air clearance sampling:

(a) must be accredited by the department as an ~~asbestos project worker or~~ asbestos ~~project~~ contractor/supervisor; and

(b) remains the same.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department is proposing to amend ARM 17.74.357 to provide clarity and consistency in air clearance methods and requirements before the conclusion of the permitted activity.

DEQ's preliminary draft of these rules included a proposal to change analytical methods and remove the NIOSH 7402 method from use. Based on input from stakeholders during the advanced stakeholder outreach process, the department agrees that this testing method should remain in rule and has removed that proposal from consideration throughout the current draft including in ARM 17.74.351 and 17.74.357.

In (1), the department proposes to specify that the final air clearance and visual inspections must occur before the permit expiration. In practice, the department has found that some permit holders have been conducting final clearances after expiration of the permit.

The department proposes striking language from (2)(a), which specifies the number of air samples, as this is covered within (3)(b). The department proposes to

amend (2)(b) by striking "or equal to the average concentration of" to prevent the averaging of multiple samples. During draft stakeholder meetings, commenters requested that averaging remain in place. Since the averaging of air samples under current rule may allow for a single sample to be five times the target "clearance" objective, the department believes that the proposed rule better protects human health and safety and, therefore, has not altered the proposal to strike averaging. In addition to proposed rules, stakeholders indicated a desire to revise the existing rule to allow for a "graduated" number of samples to be taken dependent on the size of the asbestos project. This concept would require significant reconsideration of other department rules and an extensive evaluation of the health considerations surrounding such an action. Therefore, the department decided to maintain the existing regulatory scheme and methodologies for this proposed rule update.

Other changes in (2) are made to improve grammar and readability.

The proposed amendments to (3)(b)(iii) are necessary to ensure there is adequate air disturbance for clearance monitoring. During advanced draft stakeholder meetings, commenters raised questions regarding fan speeds and maximum airflow language. The department believes the language regarding fan speeds and the intent of the rule are clearly expressed by the current "maximum airflow" and "continually agitated" language and has not altered the proposal. In addition, stakeholders indicated a desire to revise the existing rule to expand the definition of those areas exempt from aggressive air sampling, such as crawlspaces. The current "alternate work practice" procedure allows for the department to make an individual consideration based on specific site conditions. Therefore, the department decided to maintain the existing regulatory scheme and methodologies for this proposed rule update.

Regarding (3)(b)(iii), subsections (3)(b)(iv) and (3)(d)(v) both require "agitation of air," and the proposed change to (3)(b)(iii) clarifies what the department considers adequate "agitation."

The department is proposing to strike current (3)(c) and (3)(d), as the department has found these provisions to cause confusion within the regulated industry. The department believes the language within (3)(b)(iv) provides both the required specificity regarding the sampling to be required and allows for professional judgment by the sampler when additional sampling is desirable. During advanced draft stakeholder meetings, the initial draft included a proposal to require cassette placement in "each room." Based on input from stakeholders, the department has removed that proposal from consideration throughout the current draft.

In the new (3)(c), the department proposes to replace "cleared" with "approved for general re-occupancy" to improve readability and the use of plain language in the rules. During advanced draft stakeholder meetings, commenters raised concern that the term "general re-occupancy" could be misconstrued by general contractors. The department believes that the language is specific enough to express the intent that asbestos work area access be restricted to those persons properly trained in asbestos, protected from asbestos exposure, and remains under the control of the asbestos contractor/supervisor until the conditions of both a visual and air clearance have been met. When combined with the regulatory requirements regarding asbestos placed by other federal entities, the access issue is addressed.

Due to uncertainty among stakeholders, new (3)(d) specifies that the final clearance information being "recorded" must be included within a written report. During advanced draft stakeholder meetings, the initial draft did not specify the inclusion of the specified information in the report; this has been addressed in the current version.

The department again proposes in (3)(d)(i) to strike "project" from "asbestos project contractor/supervisor" to remain consistent with the definition and to add language clarifying that the name of the project permit contractor/supervisor must be recorded.

The department proposes to amend (3)(d)(vi) to assist the department during its paperwork or site reviews or when conflicting results between inspectors exist. The identification of more accurate sample location information will bolster the ability of affected parties to gain consistent results. However, it does not imply that the initial sample itself must be reproduced through this method. During draft stakeholder meetings, several commenters raised concern that it would be difficult to "exactly" duplicate sampling. The department has not included the term "exactly" in the proposal and believes the level of specificity required for an exact duplication is neither proposed, practical, or expected. There were concerns regarding the specificity required to identify an exact location of a previous sample location and at least one commenter was concerned that exact measurements would be required in three dimensions. The department believes the language regarding specificity of "sufficient detail" is expressed by the current language in a manner allowing for professional discretion and has not altered the proposal.

The department proposes to amend (3)(d)(vii) to specify the analytical method used rather than the type of cassette to be used, providing more scientific data to the department during reviews of permit paperwork.

The department proposes to insert (3)(d)(viii) to include the pump calculations for the clearances. This is critical to verify when reviewing project information and documents actions taken in (4)(b).

The department is proposing to amend (3)(f) to align recordkeeping and production with the changes to the recordkeeping rule in ARM 17.74.360.

The department proposes to amend (4)(a) to delete the specific sampling requirements from the rule text, as those requirements are already contained within the cited method. The department also proposes language regarding samples being representative of the work area to ensure that samples are representative of the entire asbestos project area.

The department proposes striking language in (4)(c) to reduce the redundancy of the specifications and to eliminate repetitive language.

The department is proposing to remove the old (5), which allowed the department to waive the requirements in the old (3)(e) if the owner or operator established that background asbestos levels exceeded the requirements of this rule. However, the department recognizes that background asbestos levels can be mitigated within a contained asbestos work area by filtration of the air within the work area. The department believes that the use of filtration to reduce high background asbestos levels in a work area better protects human health and the environment. Therefore, the department is proposing to remove the language that allowed for the issuance of waivers from the requirements in the old (3)(e).

The program proposes to amend the new (5) to be more precise in the rule text. Compliance with the final visual inspection and air clearance requirements in this rule do not necessarily mean an asbestos project has been completed, as there may be additional actions an owner or operator must take to complete an asbestos project after final visual inspection and clearance is done.

The department proposes to replace the requirements in the old (7) and (8) into a succinct, consolidated new (6). The proposed new (6) will streamline the requirements for PCM sampling analyses and is aimed at addressing confusion by some stakeholders regarding the requirements in the old (7) and (8).

The department has replaced the old (10) with the language in new (8) to reference the proposed alternate work practices provisions in ARM 17.74.353(1)(e).

The department proposes to amend terms within new (9) to meet the definition and term usage throughout rule and to preclude asbestos workers from conducting final visual inspections and air clearances. Asbestos workers are not trained under the EPA Model Accreditation Plan to conduct these activities.

17.74.358 EMERGENCY RENOVATION OPERATION ASBESTOS PROJECT PERMITS AND ORDERED DEMOLITION NOTIFICATIONS (1) For an emergency renovation operation, as defined in 40 CFR 61.141, the ~~asbestos project contractor or~~ owner or operator of the facility shall:

(a) ~~immediately~~ no later than the following working day, notify the department ~~by telephone or in person and submit~~ by submitting ~~to the department, on a form provided by the department, a completed application for an asbestos project permit pursuant to ARM 17.74.355 within five working days after the initial notice.~~ a completed emergency notification form and the fee specified in ARM 17.74.406, ensuring the submittal contains all the information required to establish that the conditions for an emergency renovation operation, as defined in 40 CFR 61.141, are met; and

(b) within five working days of submitting the notification in (a), submit to the department a full asbestos project permit application pursuant to ARM 17.74.355 and additional fees under ARM 17.74.406.

~~(2) An application for an emergency renovation operation permit must include a description of the emergency renovation operation and must demonstrate that an emergency, as defined in 40 CFR 61.141, existed that prevented the asbestos project contractor or owner of the facility from applying for a permit prior to initiation of the project.~~

(2) For ordered demolitions pursuant to 40 CFR 61.145(a)(3), the owner or operator shall submit a completed ordered demolition notification form and the fee specified in ARM 17.74.406, ensuring the submittal contains all the information required to explain why the conditions under 40 CFR 61.145(a)(3) are met.

(3) Emergency renovation operations under (1) and ordered demolitions under (2) may commence immediately after the notification and the fee for those activities are submitted to the department.

AUTH: 75-2-503, MCA
IMP: 75-2-503, 75-2-511, MCA

REASON: The department is proposing to amend the title of ARM 17.74.358 to accurately describe the content of the rule as including "ordered" demolitions.

The department proposal in (1)(a) serves to maintain consistency with the definitions and the terms usage throughout the rule. The department proposes to replace "immediately" with "no later than the following working day" to have a clearer period defined where "immediately" was subjective. The department proposes to break former (1) into two individual notification/permitting stages (a) and (b) for emergency renovation operations. While existing rule requires immediate notification followed by the submittal of an asbestos project permit application, the department believes that breaking the requirements into discrete subsections will reduce the likelihood that (b) will be overlooked by applicants. The department is proposing to add a section addressing ordered demolitions in (2). Ordered demolitions are addressed in the incorporated NESHAP; the requirements proposed in (2) address what must be submitted to the department when 40 CFR 61.145(a)(3) applies. The department is proposing to add language in (3) to clarify that activities surrounding an emergency renovation or ordered demolition may begin immediately and do not need to await the issuance of a department permit.

17.74.359 ANNUAL ASBESTOS PROJECT PERMITS (1) remains the same.

(2) The owner or operator of a facility may apply to the department for an annual asbestos project permit if the facility:

(a) continuously employs asbestos project workers~~;~~ or

~~(b)~~ continuously contracts with outside asbestos project contractors to perform asbestos projects for the facility; and

~~(c)~~(b) maintains an asbestos health and safety program that incorporates standard operating procedures for employees involved in asbestos projects.

(3) remains the same.

(4) The owner or operator of a facility applying for an annual asbestos project permit shall submit to the department:

(a) the fee required under ARM ~~17.74.401~~ 17.74.406;

(b) through (6) remain the same.

(7) A revision to an annual asbestos project permit is required as soon as possible or within 10 calendar days of the following:

(a) a change in ~~project contractor or~~ owner or operator;

(b) and (c) remain the same.

(d) the amount of regulated asbestos-containing material being disturbed ~~exceeds~~ changes the amount in (6)(a) by 20 percent or more; or

(e) remains the same.

AUTH: 75-2-503, MCA
IMP: 75-2-503, 75-2-504, MCA

REASON: In (2)(a), the department proposes a formatting change that clarifies current requirements but does not change the substance of that rule. The department proposes to amend (2)(b) by adding "asbestos project" to specify the need to use Montana-accredited contractors who provide consistency in

accreditation and requirements for an asbestos project. In (4)(a), the department proposes to update an incorrect reference to our fee rules. In (7)(d), the department proposes to strike "exceeds" and replace it with "changes" to maintain consistency with NESHAP.

17.74.360 RECORDKEEPING (1) Records of asbestos projects that are being, or have been, conducted must be retained by the owner or operator for at least 30 years and made available to the department upon request.

~~(2) Records must be retained by the and made available to the department by:~~

~~(a) the asbestos project contractor/supervisor for the project; or~~

~~(b) the owner of the facility in which the project is being or has been conducted if the owner is accredited by the department and is conducting the project without a contractor/supervisor.~~

~~(3)~~(2) Records of asbestos projects must include, but are not limited to, the following:

(a) remains the same.

(b) the location and description of each project and the amount of ACM that was ~~enclosed, removed, repaired, encapsulated, or placed in new construction~~ permitted;

(c) the starting and completion dates of each ~~instance of enclosure, removal, repair, encapsulation, or placement in new construction~~ permitted activity;

(d) the name and address of each disposal facility where asbestos-containing waste was deposited ~~for disposal~~; and

(e) a completed waste shipment record from each disposal facility indicating the amount of asbestos-containing waste deposited at the site and the date of the deposit.~~; and~~

~~(f) the waste shipment records indicating the amount of asbestos-containing waste transported to each disposal facility and the name and location of each facility.~~

AUTH: 75-2-503, MCA
IMP: 75-2-513, MCA

REASON: The department is proposing to amend ARM 17.74.360 to strike unnecessary or repetitive language and to define requirements more clearly for recordkeeping. The department proposes to insert "owner or operator" in (1), which clarified who needs to keep the records, provides consistency with the definitions, continuity of use throughout the document, and eliminates the need for (2)(a) and (b). In (3)(b) and (3)(c), the department proposes to strike reference to material that was enclosed, removed, repaired, encapsulated, or placed in new construction, and to replace it with references to permitted activity, consistent with the definition found in 75-2-502, MCA. In (3)(d), the department proposes to insert "disposal" to provide consistency with the definitions and continuity of use throughout the document. In (3)(e), the department proposed to insert "completed" to identify that the waste shipment record must be complete with all required information and signatures. This precludes the need for (3)(f) and the department proposes its removal.

17.74.362 ACCREDITATION REQUIREMENTS FOR ASBESTOS-RELATED OCCUPATIONS (1) remains the same.

(2) A person seeking initial Montana accreditation in an asbestos-related occupation shall:

(a) remains the same.

(b) submit to the department a completed application form provided by the department, with the fee required in ARM ~~17.74.402~~ 17.74.407 and a copy of a certificate of satisfactory completion from the course approved for that occupation.

(3) The department may accredit a person in an asbestos-related occupation who is currently accredited or certified in another state, provided the applicant:

(a) has successfully completed a refresher course from a department-approved training provider; and

(b) holds an accreditation or certification from an authority delegated to implement an accreditation program at least as stringent as the Model Accreditation Plan or can provide the department with the initial and all subsequent refresher certificates, demonstrating there has not been a lapse in certification over one calendar year from any certificate expiration.

(4) A person seeking accreditation under (3) shall submit to the department a complete application on a form provided by the department, with the fee required in ARM 17.74.407 and documentation showing compliance with (3).

(3) remains the same, but is renumbered (5).

AUTH: 75-2-503, MCA
IMP: 75-2-511, MCA

REASON: The department proposes to amend ARM 17.74.362 to support the proposed repeal of reciprocity under ARM 17.74.343. The department proposes to add "Montana" in (2) to make clear the authority the department has for issuing accreditations. The department proposes in (3)(a) to include a new requirement for out-of-state applicants to receive formal training, from a department-approved training provider. This requirement provides the best opportunity for compliance with the Montana Asbestos Control Act by individuals likely unfamiliar with the specifics of Montana rule. The department proposal in (3) would formalize the existing department business process for verifying training certificates for out-of-state applicants and provide consistency with the MAP regarding lapses in training.

17.74.363 RENEWAL OF ACCREDITATION (1) A person may not engage in an asbestos-related occupation after the expiration of accreditation until ~~accreditation is renewed~~ they have renewed their accreditation and received a copy of their Montana asbestos accreditation from the department.

(2) remains the same.

(3) An applicant for renewal of accreditation in an asbestos-related occupation, except asbestos ~~project~~ inspector and management planner, shall attend a one-day refresher course approved by the department or EPA for that specific occupation.

(4) For renewal of accreditation as an asbestos ~~project~~ inspector, a person shall attend a half-day refresher course approved by the department or EPA.

(5) Asbestos ~~project~~ management planners shall attend the half-day asbestos inspector refresher course plus an additional half-day refresher course on asbestos project management planning approved by the department or EPA.

(6) remains the same.

(7) An applicant for renewal of accreditation as instructor shall attend a refresher course:

(a) remains the same.

(b) taught by the instructor with three or more eligible students.

AUTH: 75-2-503, MCA
IMP: 75-2-511, MCA

REASON: The department proposes to add a line in (1) to indicate that an accredited individual can perform in an asbestos-related occupation only after they receive state authorization, usually in the form of an accreditation card. In (3), (4), and (5), the department proposes to strike "project" from terms redefined within the definition proposals to be consistent with those changes. In (7)(b), the term "eligible" is proposed to be inserted to reflect that the instructor may not consider "eligible" any individuals who have lapsed in certification, or not previously held an initial course when calculating "three" students. During draft stakeholder meetings, it was suggested to remove this proposal as the instructor's presentation of material is defined under current rule regardless of the qualifications of any attendees in the class. The department believes the integrity of the training should be maintained and has witnessed individuals with no previous training listed as attendees. This scenario omits valuable peer interaction and shared knowledge from the training, provides the instructor with no additional benefit, and does not meet the intent of annual refresher training for the approved instructor. The language has not been altered in the proposal.

17.74.364 TRAINING PROVIDER REQUIREMENTS (1) remains the same.

(2) The department shall approve a training course if it meets the requirements ~~listed in~~ under this rule and ARM 17.74.365.

(3) For department approval of a training course, instructors' qualifications must include:

(a) remains the same.

(b) a cumulative total of three years accreditation in Montana to include current accreditation in Montana for the asbestos-related occupation related to the course to be taught.

(i) An instructor who is accredited as ~~a~~ an asbestos contractor/supervisor may teach the asbestos ~~project~~ worker course without current accreditation as an asbestos ~~project~~ worker.

(4) Except for the asbestos ~~project~~ worker course and the refresher courses, at least two approved instructors shall conduct all training courses.

(5) All training course materials and examinations must be submitted to the department for the department's approval. Upon department approval, the training course is approved for a two-year period, beginning January 1 of the year following approval. The department may not accept applications for training course approval

before October 1 of the year preceding the two-year training course approval period. A person may apply for approval as a training course provider beginning January 1 of the year following training course approval by submitting the following to the department by November 15 of the preceding year:

(a) through (d) remain the same.

(e) a list of the proposed instructors who will teach the course along with ~~their resume or other documentation supporting the instructors' qualifications, which must include significant academic and/or field experience in the asbestos control disciplines to be instructed~~ written documentation specifying how each instructor meets the qualifications under (3);

(f) and (g) remain the same.

(h) the appropriate fee for approval of the course, specified in ARM ~~17.74.403~~ 17.74.408; and

(i) remains the same.

(6) Training course providers may, at the time of application, request to present refresher courses through an online format at no additional fee. Online refresher courses are subject to the following requirements:

(a) the course must be presented on a free-to-use virtual platform that utilizes both visual and audio communication, with the instructor present in both visual and audio formats throughout the course;

(b) the training course provider may excuse students from keeping their cameras or microphones on throughout the class, but periodic check-ins are required to verify course participation;

(c) notification by the course provider required under (7) shall indicate the course will be conducted virtually; and

(d) the training provider shall, no later than 24 hours prior to the class, provide the department with online access information to enter the virtual classroom.

(6) remains the same, but is renumbered (7).

~~(7)~~(8) A training course provider shall notify the department at least 45 days in advance of implementing any changes in the content of approved training courses, examinations, or instructors during the two-year course approval period in (5). The department shall approve, deny, or request additional information regarding any proposed change in training course, examination contents, or change in instructor(s) within 45 working days of receiving the notification. Updates to course content made to reflect changes in state or federal regulations must be made as soon as practicable and do not require prior department approval; however, training course providers shall provide notice of such updates to the department within 45 days.

(8) and (9) remain the same, but are renumbered (9) and (10).

~~(10)~~(11) Within two working days of completing a course, the training course provider shall submit a course roster to the department. The course roster must identify:

(a) through (e) remain the same.

(f) each course participant's course certificate number; ~~and~~

(g) a statement that each person receiving a certificate has completed the training required for accreditation under this subchapter~~.~~; and

(h) whether each participant's instruction was online or in-person.

~~(11) Training provider course approval expires at the end of the two-year approval period established in (5), unless the training provider applies for renewal by November 15 of the year the approval period expires.~~

~~(12) A training provider seeking to renew course approval shall provide the department with the information listed in (5) and pay the appropriate fee as provided in ARM 17.74.408.~~

AUTH: 75-2-503, MCA
IMP: 75-2-511, MCA

REASON: The department proposes to amend (2) to clarify that a training course must comply with both this rule and ARM 17.74.365 to be approved by the department. The department proposes to add "Montana" to (3)(b) to make clear that instructors must be accredited in the state of Montana. This change ensures that instructors are familiar with Montana-specific asbestos rules. The department proposes to codify the internal business process assessing accreditation longevity to "academic and/or field experience in asbestos control" by insertion of language in (3)(c). The department proposes the removal of redundant language in (5)(e), instead referencing the qualifications in (3). The proposed change to (5)(h) corrects the citation regarding 2020 fee changes. After receiving stakeholder input regarding virtual training and the necessity to adjust to a virtual environment during the global pandemic, the department proposes (6)(a) through (d) to set parameters around virtual courses while addressing the needs of students, trainers, the department, and outside entities. The department proposes amending (8) to allow training providers professional discretion to immediately revise training content when federal and state regulations or rules are amended, but to provide information regarding the change to the department within 45 days.

The department proposes to include (11)(h) to require training delivery method on certificates. The department and other regulatory agencies believe tracking this information will provide added value to future changes. The department proposes to delete (11) and (12) as the requirements are repetitive and already required under (5).

17.74.365 TRAINING COURSE REQUIREMENTS (1) A training course for accreditation as an asbestos ~~project~~ worker must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.1, Workers.

(2) A training course for accreditation as an asbestos ~~project~~ contractor/supervisor must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.2, Contractor/Supervisor.

(3) A training course for accreditation as an asbestos ~~project~~ inspector must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.3, Inspector.

(4) A training course for accreditation as an asbestos ~~project~~ management planner must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.4, Management Planner.

(5) and (6) remain the same.

AUTH: 75-2-503, MCA
IMP: 75-2-511, MCA

REASON: The department is proposing to amend ARM 17.74.365 to update language to be consistent with the definitions and the asbestos-related occupation titles as used throughout rule.

17.74.366 TRAINING COURSE EXAMINATIONS (1) The following requirements apply to asbestos-related occupation accreditation training course examinations:

(a) for asbestos ~~project~~ worker, asbestos inspector, and asbestos ~~project~~ management planner training courses, the examination must include 50 multiple choice questions with a passing score of at least 70%; and

(b) for asbestos ~~project~~ contractor/supervisor and asbestos project designer courses, the examination must include 100 multiple choice questions with a passing score of at least 70%.

(2) All examinations must be closed book and consist of a minimum of 10 percent questions based on the Asbestos Control Act and Montana-specific rules in this subchapter.

AUTH: 75-2-503, MCA
IMP: 75-2-511, MCA

REASON: The department proposes to strike "project" from "asbestos project worker," "asbestos project management planner," and "asbestos project contractor/supervisor" to be consistent with the definitions and the asbestos-related occupation titles as used throughout the rule. The proposed amendment to ARM 17.74.366 is necessary to evaluate comprehension of Montana rules adopted under the Asbestos Control Act by those students attending an initial course.

17.74.367 REFRESHER COURSES (1) remains the same.

(2) Refresher courses must relate to a ~~particular~~ specific asbestos-related occupation and must include review of changes in federal and state of Montana specific regulations, developments in state-of-the-art procedures, and key aspects of the initial training course.

(3) For department approval of a refresher course, a person shall submit to the department, on a form provided by the department, a completed application and the fee specified in ARM ~~17.74.403~~ 17.74.408. The application must include:

(a) through (e) remain the same.

(4) At least ten working days before a refresher course commences, the person providing the training course shall notify the department of the date, time, and location of the course, including whether the course is to take place virtually.

AUTH: 75-2-503, MCA
IMP: 75-2-511, MCA

REASON: The department proposes to amend (2) to reinforce the requirement of state-specific regulations in refresher courses. The department must ensure that any contractor that is accredited by the program has been instructed in and has a working knowledge of the necessary state regulations to conduct work safely in Montana. The department proposes to amend (3) to correct the fee reference to ARM 17.74.408. The department proposes to add specific requirements in (4) for refresher course training notifications to the department, and to establish the means of instruction delivery. The department and other regulatory agencies believe tracking this information will provide added value to future changes.

17.74.368 TRAINING COURSE AND REFRESHER COURSE CERTIFICATE AND RECORDKEEPING REQUIREMENTS (1) A person providing a training course for accreditation in an asbestos-related occupation shall provide a certificate to all persons who successfully complete the course and the examination. The certificate must be numbered and include:

(a) through (h) remain the same.

(i) a statement that the trainee, by name, has successfully passed the examination for the course; ~~and~~

(j) an accreditation expiration date of one year after the date upon which the person successfully completed the course and examination~~.~~; and

(k) a notation indicating whether the course material was presented online or in-person.

(2) through (4) remain the same.

AUTH: 75-2-503, MCA
IMP: 75-2-511, MCA

REASON: The department proposes adding a requirement for course training certificates to identify the means of instruction delivery. Acceptance of virtual instruction remains at the discretion of each state and the identification of these courses is being introduced into more state rule text.

17.74.369 TRANSPORTATION AND DISPOSAL OF ASBESTOS-CONTAINING WASTE (1) A person may not transport asbestos-containing waste generated at a facility unless accredited by the department as an asbestos ~~project~~ worker or asbestos ~~project~~ contractor/supervisor or escorted and supervised by a person who is accredited as an asbestos ~~project~~ worker or asbestos ~~project~~ contractor/supervisor.

(2) Prior to transporting or disposing of asbestos-containing waste from an asbestos project, a person shall ~~obtain~~ possess a~~n~~ valid asbestos project permit from the department or apply for and obtain a Montana Transport and Disposal Permit pursuant to ARM 17.74.355.

(3) A person who transports or escorts a vehicle that contains asbestos-containing waste from an asbestos project shall:

(a) remains the same.

(b) prior to waste pick up:

(i) obtain assurance from the asbestos ~~project~~ contractor/supervisor that the asbestos-containing waste is adequately wet;

(ii) through (v) remain the same.

(vi) either deposit asbestos-containing waste at a licensed Class II or Class IV landfill facility as soon as practical, or, if asbestos-containing waste is not disposed of as soon as practical, store any asbestos-containing waste in a secure holding facility or location accessible only to asbestos ~~project~~ workers or asbestos ~~project~~ contractor/supervisors accredited by the department; and

(vii) and (c) remain the same.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: In both (1) and (3), the department proposes to strike "project" from asbestos-related occupation terms redefined within the definition proposals to be consistent with those changes. The department proposes to amend (2) to clarify an individual must possess a valid permit as the previous language was subjective regarding tense. Within its proposed change to (2), the department seeks to include the Montana Transport and Disposal permit language to clarify that permitting option under ARM 17.74.355 for those without a Montana asbestos project permit for removal.

17.74.409 REFUNDS (1) and (2) remain the same.

(3) The director, or the director's designee, may authorize a refund of fees due to extenuating circumstances causing the permit or accreditation holder to be unable to use the accreditation or permit because of:

(a) remains the same.

(b) catastrophic or major natural disaster or man-made event that requires assistance from a state or federal emergency management agency~~.~~; or

(c) other circumstances for good cause shown.

(4) remains the same.

(5) For refunds granted under (3), the department shall retain an administrative fee of 15 percent.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department proposes to amend (3) to allow for the issuance of refunds in other circumstances where good cause exists. In practice, the department has found the existing rule overly restrictive, limiting the department's ability to issue refunds where good cause otherwise exists. The proposed revision would allow the department to issue refunds in such circumstances while placing the burden on the person requesting the refund to establish a sufficient basis for the department to issue the refund. The department also proposes (5), the retention of an administrative fee of 15% of the fee to be refunded, to assist the department in covering administrative costs incurred by reviewing and processing refunds. The

department will not retain an administrative fee for refunds issued due to an error by the department.

4. The department proposes to repeal the following rules:

17.74.343 RECIPROCITY

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department proposes repealing ARM 17.74.343 as the accreditation requirements, for both in-state and out of state persons, are more appropriately and consistently covered under ARM 17.72.362.

17.74.370 ENCLOSURE OF ASBESTOS-CONTAINING MATERIAL

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department proposes to repeal ARM 17.74.370 because enclosure projects are included in the definition of asbestos projects in 75-2-502(3), MCA. This rule is redundant and can be removed.

17.74.371 ENCAPSULATION OF ASBESTOS-CONTAINING MATERIAL

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department proposes to repeal ARM 17.74.371 because encapsulation projects are included in the definition of asbestos projects in 75-2-502(3), MCA. This rule is redundant and can be removed.

17.74.372 REPAIR OF ASBESTOS-CONTAINING MATERIAL

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department proposes to repeal ARM 17.74.372 because encapsulation projects are included in the definition of asbestos projects in 75-2-502(3), MCA. This rule is redundant and can be removed.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail at DEQAsbestosRule@mt.gov, and must be received no later than 5:00 p.m., January 12, 2024.

6. Nicholas Whitaker, staff attorney for the department, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been observed. The bill sponsor was notified by letter on October 12, 2023.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Angela Colamaria*
ANGELA COLAMARIA
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State November 28, 2023.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and the amendment of ARM 23.12.102 pertaining to criminal history information provided by the department to qualified entities	)))))	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 8, 2024, the Department of Justice proposes to adopt and amend the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on December 22, 2023, to advise us of the nature of the accommodation that you need. Please contact Anne Dormady, Department of Justice, 2225 11th Avenue, Helena, Montana, 59601; telephone (406) 444-9759; fax (406) 444-0689; or e-mail adormady@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I ACCESS TO CRIMINAL HISTORY INFORMATION PROVIDED BY THE DEPARTMENT TO QUALIFIED ENTITIES (1) A qualified entity shall register with the department before submitting a request for screening under this rule per the following conditions:

(a) each request shall be voluntary and conform to the requirements established in the National Child Protection Act of 1993, as amended;

(b) the qualified entity shall agree to comply with state and federal law and shall so indicate by signing an agreement approved by the department; and

(c) the department may periodically audit qualified entities to ensure compliance with federal law and this rule.

(2) A qualified entity shall submit a request to the department for screening of an employee, volunteer, or person applying to be an employee or volunteer, by submitting fingerprints. The qualified entity must maintain a signed waiver allowing the release of the state and national criminal history record information to the qualified entity.

(3) Each request shall be accompanied by the fee authorized by 44-5-307, MCA, plus the amount currently prescribed by the Federal Bureau of Investigation for the national criminal history check in compliance with the National Child Protection Act of 1993, as amended.

(4) The department shall provide directly to the qualified entity the state criminal history records that are not exempt from disclosure under 44-5-103, MCA, or otherwise confidential under law. A person who is the subject of a state criminal history record may challenge the record only as provided in 44-5-215, MCA.

(5) The determination whether the criminal history record shows that the employee or volunteer has been convicted of or is under pending indictment for any crime that bears upon the fitness of the employee or volunteer to have responsibility for the safety and well-being of children, the elderly, or disabled persons shall solely be made by the qualified entity. This rule does not require the department to make such a determination on behalf of any qualified entity.

(6) The qualified entity shall notify in writing the person's right to obtain a copy of any background screening report, including the criminal history records, if any, contained in the report, and of the person's right to challenge the accuracy and completeness of any information contained in any report and to obtain a determination as to the validity of the challenge before a final determination regarding the person is made by the qualified entity reviewing the criminal history information. A qualified entity that is required by law to apply screening criteria, including any right to contest or request an exemption from disqualification, shall apply screening criteria to the state and national criminal history record information received from the department for those persons subject to the required screening.

AUTH: 44-5-105, MCA
IMP: 44-5-105, MCA

REASON: The federal government now requires states with a Volunteer and Employee Criminal History System (VECHS) program to have either a state statute or rule in place to allow eligible entities to conduct federal criminal record checks on individuals such as employees, volunteers, contractors, and vendors who will have ongoing unsupervised interaction with vulnerable populations. The Department of Justice is proposing to adopt this rule to meet the federal government requirement.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

23.12.102 DEFINITIONS Unless the context requires otherwise, the following definitions apply to ARM 23.12.102 through 23.12.106:

(1) remains the same.

(2) "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

(2) through (11) remain the same, but are renumbered (3) through (12).

(13) "Qualified entity" means a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.

(12) and (13) remain the same, but are renumbered (14) and (15).

AUTH: 44-5-105, MCA
IMP: 44-5-213, MCA

REASON: After further consideration, the department decided to re-notice MAR Notice No. 23-12-274 as it was determined that the new rule would be more properly placed into ARM Title 23, chapter 12, subsection 1, thereby necessitating placing these two definitions into ARM 23.12.102 instead of into ARM 23.12.201. The definitions are necessary to clarify their meaning as used in proposed NEW RULE I.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Anne Dormady, Department of Justice, 2225 11th Avenue, Helena, Montana, 59601; telephone (406) 444-9759; fax (406) 444-0689; or e-mail adormady@mt.gov, and must be received no later than 5:00 p.m., January 5, 2024.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Anne Dormady at the above address no later than 5:00 p.m., January 5, 2024.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 3,309 persons based on the number of background checks done last year.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. These rule changes will not result in any fee changes to what the department is currently charging for criminal history background checks. The rule

changes are simply memorializing what is already charged for this service. Last year, the department conducted 33,088 background checks for a fee of $30 per background check.

/s/ DAVID ORTLEY	/s/ AUSTIN KNUDSEN
David Ortley	Austin Knudsen
Deputy Attorney General	Attorney General
Rule Reviewer	Department of Justice

Certified to the Secretary of State November 28, 2023.

BEFORE THE PUBLIC SAFETY OFFICER
STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through IV and the amendment of ARM 23.13.101, 23.13.102, 23.13.103, 23.13.104, 23.13.204, 23.13.205, 23.13.206, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.212, 23.13.301, 23.13.302, 23.13.304, 23.13.601, 23.13.702, 23.13.703, 23.13.704, 23.13.705, 23.13.713, 23.13.714, 23.13.716, 23.13.719, 23.13.720, 23.13.721, 23.13.801, 23.13.803, 23.13.804, 23.13.805, 23.13.806, and 23.13.807 pertaining to the certification of public safety officers	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On January 10, 2024, at 10:00 a.m., the Public Safety Officer Standards and Training (POST) Council will hold a public hearing in Room 207 of the Karl Ohs Building, Montana Law Enforcement Academy, 2260 Sierra Road East, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The POST Council will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the POST Council no later than 5:00 p.m. on December 22, 2023, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; fax (406) 444-9978; or e-mail kbolger@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I COMMITTEES OF THE POST COUNCIL (1) The following are committees of the POST Council:

(a) The Administrative Rules of Montana Committee, or ARM Committee, consists of five voting members of the POST Council. The ARM Committee's purpose is to review and analyze POST rules and recommend appropriate rule draft and amendment language to carry out the decisions of the POST Council. The ARM Committee's rule proposals must be approved by a majority vote of the council prior to submission to the Secretary of State's office. The ARM Committee may, by a

majority vote of the committee, direct that POST staff, with the assistance of legal counsel, prepare draft rule language for the council's consideration.

(b) The Business Plan/Policy Committee consists of three voting members of the POST Council. The Business Plan/Policy Committee's purpose is to review and, when necessary, propose changes to the long-range business plan of the council, and the daily operations, policies, and procedures under which the POST staff perform day-to-day business. Any substantive business plan, policy, or procedural changes must be approved by a majority vote of the council. The Business Plan/Policy Committee may, upon a majority vote of the committee, direct POST staff to prepare draft business plan or policy language for the council's consideration.

(c) The Case Status Committee consists of three voting members of the POST Council. The Case Status Committee's purpose is to determine whether allegations of misconduct by a public safety officer warrant investigation by POST staff, to determine whether a certificate sanction or other action is appropriate, to determine the appropriate sanction to a certificate upon a finding of misconduct, and to review other proposed actions at the request of the director. The director and POST staff will act based upon a majority vote of the Case Status Committee. Case Status Committee members may not participate in deliberations or any decision of the full council regarding the sanction of an officer's POST certification, except as provided in these rules.

(d) The Coroner Committee consists of three voting members of the POST Council. The Coroner Committee's purpose is to track and monitor issues of interest to the Montana Coroner's Association, and coroners in general. Any draft legislative proposals or other proposed action must be approved by a majority vote of the POST Council. Draft ARM proposals must be approved by a majority vote of the POST Council and may be referred to the ARM Committee for approval or drafting as well. The Coroner Committee may, by a majority vote of the committee, direct POST staff, with the assistance of legal counsel, to create draft legislation or ARM language relevant only to coroner issues for the council's consideration.

(e) The Curriculum Review Committee consists of five voting members of the POST Council. The MLEA administrator or the MLEA administrator's designee may act as an ex-officio member of the Curriculum Review Committee. The purpose of the Curriculum Review Committee is to review and discuss proposed training curriculum requiring POST approval or information. Any curriculum or basic course developed or reviewed by the Curriculum Review Committee must be approved by a majority vote of the POST Council.

(f) The Executive Committee consists of five members of the POST Council, including the chair of the POST Council. The chair of the POST Council will serve as the chair of the Executive Committee. The purpose of the Executive Committee is to make decisions necessary to implement the policies of the POST Council, and to provide additional oversight of POST staff. The decisions of the Executive Committee may include informing the Montana Legislature or a legislative committee of positions adopted by the council, providing advice and direction, short of ultimate decisions, regarding legal matters in which the council is a named party, and directing action by POST staff in order to accomplish the council's goals. The Executive Committee may direct POST staff to provide information to the legislature or its interim committees. The Executive Committee may also direct POST staff to

appear and testify before the legislature or its interim committees in furtherance of positions taken by the council, or on behalf of the Executive Committee. When POST staff is representing a position of the Executive Committee only, it will disclose that the council has not taken a position on the issue. The Executive Committee may call a special meeting of the council, and may make recommendations to the council at a special or regular meeting.

(2) The POST Council may create additional committees upon a motion and resolution passed by a majority vote of the POST Council, including a description of the committee's purpose and authority. The chair of the POST Council will appoint members, and designate chairs of the committees of the POST Council in open meetings. The POST Council chair's appointments are subject to approval by a majority vote of the POST Council. During its final meeting of each calendar year, the POST Council will review the membership of each of its committees and determine whether new or alternative appointments should be made.

(3) If a committee member resigns from a committee of the POST Council or otherwise vacates the member's seat on a committee, the POST Council chair may make an interim appointment to fill the vacancy. Interim committee members may take action and vote on issues which are before the committee until the POST Council has the opportunity to approve the appointment of the committee member at its next regularly scheduled meeting.

(4) The chair may appoint non-voting ex-officio members of POST Council committees. Ex-officio members should be recognized subject matter experts in the field related to the committee's purpose. Ex-officio members may not be POST Council members. Ex-officio members are subject to approval by a majority vote of the POST Council.

AUTH: 2-15-2029, MCA
IMP: 44-4-403, MCA

REASON: This rule is necessary to explain changes to, and the makeup of, permanent committees of the POST Council. In September of 2022, the POST Council amended its rules to include a definition of the Case Status Committee. During the 2023 Legislative Session, the council adopted Resolution 23-002, which created an Executive Committee. During a regular review of its rules, the POST Council determined that adopting a rule to include in its organizational subchapter defining its permanent committees will increase transparency and provide clarity and consistency to the public and POST's stakeholders regarding the purpose for each committee. This new rule also provides a clear process for appointing committee members and creating new committees as warranted.

NEW RULE II PROCEDURE FOR OBTAINING POST CERTIFICATION

(1) Except as provided in (3), POST will automatically issue basic certificates to public safety officers who meet the minimum requirements outlined in these rules.

(2) Officers who believe they are eligible for an intermediate, advanced, supervisory, command, or instructor certificate must submit a completed application, with appointing authority approval, to the director. Applications are available from POST staff or on the POST website.

(a) The director or the director's designee will then review the application and approve or reject the application, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director, the certificate becomes valid unless the council takes further action.

(c) Upon rejection by the director, a public safety officer may request reconsideration by the council pursuant to ARM 23.13.704.

(3) POST will not automatically issue a basic certificate to:

(a) reserve officers; or

(b) any public safety officer against whom POST has received allegations of misconduct which may be a violation of the code of ethics in ARM 23.13.803 or constitute grounds for denial, sanction, suspension, or revocation in ARM 23.13.702.

(c) Upon notice of the reserve officer's qualification, made by the reserve officer's agency head to the director on a form approved by the council, POST will issue a reserve officer basic certificate to the reserve officer.

(d) The director and the Case Status Committee will review the qualifications of an officer accused of violations of ARM 23.13.702 or 23.13.803, pursuant to these rules.

(4) POST will not consider any application for certification or recertification when the applicant's certification has previously been denied or revoked as defined in these rules, and a final agency decision, including any appeal, regarding the denial or revocation has been entered.

AUTH: 2-15-2029, MCA
IMP: 44-4-403, MCA

REASON: This rule is necessary to clarify the process of applying for POST certification. During a regular review of its rules, the POST Council determined that adopting a certification rule outlining the process for applying for POST certification would provide clarity and consistency to the public and POST's stakeholders, while also eliminating repetitive language in POST's certification rules. This new rule also provides clarity and consistency regarding issuance of basic certificates. In 2023, POST was contacted several times by individuals whose certification was denied or revoked, inquiring whether there is a process by which they may become certified in Montana. This rule addresses this question and provides a clear answer to such inquiries.

NEW RULE III PROCESS FOR OBTAINING POST APPROVAL FOR PUBLIC SAFETY OFFICER TRAINING COURSES (1) POST may provide approval for POST credit hours for training that is instructed by a POST-certified instructor, or which is being hosted by a governmental agency with a Montana location.

(2) A POST-certified instructor seeking course credit for training provided to public safety officers must have an active POST instructor certificate that is not revoked, suspended, or subject to POST sanctions and must submit an application for accreditation to the director or the director's designee and retain documentation of:

(a) an education or training record that indicates the officer has received education or training in the specific field, subject matter, or academic discipline to be taught;

(b) material showing course content, including an agenda, syllabus and/or lesson plan, and student handouts; and

(c) a copy of the course advertisement.

(3) To receive POST training credit, a governmental agency hosting a training for a public safety officer or officers must submit an application for accreditation to the director, or the director's designee, and retain documentation of:

(a) if the instructor is a POST-certified instructor, a copy of the instructor's instructor certificate and an education or training record that indicates the officer has received education or training in the specific field, subject matter, or academic discipline to be taught; or

(b) if the instructor is not a Montana public safety officer, a copy of the instructor's biography;

(c) material showing course content, including an agenda, syllabus and/or lesson plan, and student handouts; and

(d) a copy of the course advertisement.

(4) Any application for POST training credit hours must be submitted within one year of the end of the course.

(5) It is the responsibility of the POST-certified instructor or the governmental agency hosting a training to retain the required documentation set forth in these rules and monitor the standards for training, trainee attendance, and performance as set by the council. Records maintained under this rule are subject to audit by the director or the director's designee during normal business hours upon reasonable notice to the agency.

(6) The director or the director's designee will review the application and approve or reject the application, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

AUTH: 2-15-2029, MCA
IMP: 44-4-403, MCA

REASON: This rule is necessary to clarify the process for applying for POST approval of training courses. During a regular review of its rules, the POST Council recognized that the rules for approval of training courses were not sufficiently laid out or adequately organized.

NEW RULE IV PROCESS FOR OBTAINING POST TRAINING CREDIT HOURS FOR INDIVIDUAL PUBLIC SAFETY OFFICERS (1) POST may provide POST training credit hours to individual public safety officers who submit an application after attending a training which was not approved.

(2) To receive POST training credit, a public safety officer must, after successful completion of a course, submit an application for accreditation to the director, or the director's designee, and retain documentation of:

(a) if the instructor was a POST-certified instructor, a copy of the instructor's instructor certificate; or

(b) if the instructor is not a Montana public safety officer, a copy of the instructor's biography;

(c) material showing course content, including an agenda, syllabus and/or lesson plan, and student handouts;

(d) a copy of the course advertisement;

(e) a copy of the officer's certificate of completion; and

(f) an endorsement from the officer's appointing authority, recommending that the POST training credit hours be awarded.

(3) Any application for POST training credit hours must be submitted within one year of the end of the course.

(4) It is the responsibility of the public safety officer or the appointing authority of the public safety officer to retain the required documentation set forth in these rules and comply with the standards for training, trainee attendance, and performance as set by the council. Records maintained under this rule are subject to audit by the director or the director's designee during normal business hours upon reasonable notice to the agency.

(5) The director or the director's designee will review the application and approve or reject the application, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

AUTH: 2-15-2029, MCA
IMP: 44-4-403, MCA

REASON: This rule is necessary to clarify the process for individual officers to apply for POST approval of training courses undertaken on their own or where the instructor or agency has not obtained approval, and also to provide clarity and consistency. Individual training credit hours make up approximately half of the training credit hours that POST approves. Since the beginning of the Covid-19 pandemic, POST has seen an increase in the number of online training courses which are available to individual officers. Many appointing authorities have invested resources in these online training opportunities, and this rule provides officers a clear process for obtaining training credit hours.

4. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

<u>23.13.101 ORGANIZATION AND GENERAL PROVISIONS, PUBLIC INSPECTION OF ORDERS AND DECISIONS</u> (1) The organization and function of the Public Safety Officer~~s~~ Standards and Training Council ("POST" or "POST Council") are described in ARM 23.1.101~~(1)(d), (2)(k), and (4)~~.

(2) remains the same.

AUTH: 2-15-2029, MCA
IMP: 2-4-201, 2-4-623, 2-15-2029, 44-4-403, MCA

REASON: During a regular review of its rules, POST discovered that the section numbers of ARM 23.1.101 had been changed and the decision was made to remove the ARM earmarks per the Secretary of State's rulemaking guidelines.

23.13.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Allegation" means:

(a) and (b) remain the same.

(c) the document or statement, prior to the notice of agency action, that initiates the ~~informal denial, revocation, suspension, or sanction proceeding against~~ preliminary investigation of an officer.

~~(2) "Case status committee" is a three-member committee of the POST Council, appointed by the chair of the council. The council chair shall designate a chair of the case status committee. The case status committee's purpose is to determine whether allegations of misconduct by a public safety officer should be investigated by POST staff, to determine whether a certificate sanction is appropriate, to determine the appropriate sanction to a certificate upon a finding of misconduct, and to review other proposed actions at the request of the director. The director will act based upon a majority vote of the case status committee.~~

(3) remains the same, but is renumbered (2).

~~(4)~~(3) "Contested case" means~~:~~

~~(a)~~ a civil administrative proceeding that progresses pursuant to notice and hearing as outlined in MAPA and these rules~~; or~~ , and which is initiated by a request for a hearing from an officer after the officer has received a notice of agency action imposing denial, sanction, suspension, or revocation by the director when the case could not be settled at the preliminary stage of review, investigation, or informal proceeding.

~~(b) a proceeding initiated by a request for a hearing from the officer after the officer has received a notice of agency action imposing sanction, suspension, or revocation by the director when the case could not be settled at the preliminary stage of review, investigation, or informal proceeding.~~

(5) remains the same, but is renumbered (4).

~~(6)~~(5) "Council," ~~or~~ "POST Council," or "POST" means the ~~full 13-member~~ Public Safety Officer Standards and Training Council as created by 2-15-2029, MCA.

(6) "Denial," "deny," or "denied" means POST's permanent refusal to issue a basic certificate in any discipline, due to any violation of ARM 23.13.702 or 23.13.803.

(7) "Director" or "executive director" means the ~~bureau chief~~ executive director of the Public Safety Officer Standards and Training ~~bureau~~ Council.

(8) "Employing authority," "employing agency," "appointing authority," or "governmental unit" means any entity that is statutorily empowered with administration, supervision, hiring or firing authority, training, or oversight over a public safety agency or officer. This may include but is not limited to: the chief of police, mayor, county attorney, city council, warden, sheriff, etc.

(9) "Equivalency" means the process through which an officer who has successfully completed a basic course that is taught or approved by a federal, state,

local, or United States military law enforcement agency, that satisfies the basic training requirement for that agency, may obtain a Montana POST basic certificate without completing the MLEA basic academy.

(9) and (10) remain the same, but are renumbered (10) and (11).

~~(11)~~(12) "In-service training" means training which is not POST-approved training and which is provided ~~within a law enforcement and/or~~ to public safety ~~agency~~ officers to review and develop skills and knowledge for ~~the~~ a specific ~~agency's~~ officer's needs.

~~(12) "Informal proceeding" means a proceeding that occurs before a MAPA contested case proceeding and includes but is not limited to: correspondence between POST and the officer accused of misconduct and his employing authority; investigation by POST; stipulation or settlement negotiations or agreement; or a sanction, suspension, or revocation imposed through a notice of agency action.~~

(13) "Lateral POST training credit" means training which has been provided to a public safety officer who was formerly employed by a federal agency, state, tribe, county, municipality, city, or town, which is not a Montana public safety agency, and who is currently employed by a Montana public safety agency, when that training meets the requirements of POST-approved training. Lateral POST training credit will not be entered on an officer's POST transcript, but it may be used toward POST certificates as outlined in these rules.

(13) remains the same, but is renumbered (14).

~~(14)~~(15) "Misconduct" means any action or conduct that could potentially result in denial, sanction, suspension, or revocation of POST certification pursuant to ARM 23.13.702 or a violation of the code of ethics contained in ARM ~~23.13.203~~ 23.13.803.

(15) through (17)(a) remain the same, but are renumbered (16) through (18)(a).

(b) informs the officer of the denial, suspension, revocation, or sanction imposed by the POST director and the supporting reasons;

(c) remains the same.

~~(18)~~(19) "Party" means one side, or its representative, in ~~an informal~~ a preliminary investigation or contested case proceeding, usually the respondent and/or POST.

~~(19)~~(20) "POST-approved training" means training reviewed and approved by POST pursuant to ~~ARM 23.13.301~~ these rules for which POST gives training credit, including but not limited to basic, regional, and professional courses.

~~(20)~~(21) "POST-certified instructor" means a public safety officer, as defined in these rules, who has met the requirements for and received an Instructor Certificate pursuant to these rules, and who may apply for and receive ~~approval for POST training~~ POST-approved training credit pursuant to these rules~~,~~ for trainings the officer conducts.

(21) remains the same, but is renumbered (22).

~~(22)~~(23) "Public safety officer" means an officer, as defined in 44-4-401, MCA. Nothing in these rules may be construed to apply the requirements of 7-32-303 or 44-4-403, MCA, to an elected ~~official~~ sheriff or coroner.

(24) "Reject" or "rejection" means POST's refusal of any request or application by a public safety officer or a public safety agency, which is not a denial as defined in these rules.

(23) through (25) remain the same, but are renumbered (25) through (27).

~~(26)~~(28) "Sanction" means a consequence or punishment for a violation of ARM 23.13.702, ~~23.13.203~~ 23.13.803, or the laws or rules of Montana.

(27) and (27)(a) remain the same, but are renumbered (29) and (29)(a).

(b) any sexual contact without consent as defined in 45-5-501~~(1)(b)~~, MCA, without regard to whether such violation results in criminal charges or a conviction, including gratuitous physical contact with suspects or other civilians, such as unnecessary searches, frisks, or pat-downs;

(c) through (e) remain the same.

(f) any other sexual conduct which, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the ~~employing~~ appointing authority's integrity or the officer's honesty, integrity, or fitness as an officer.

(28) through (30) remain the same, but are renumbered (30) through (32).

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 7-32-303, 44-4-403, MCA

REASON: The change to the definition of "allegation" was necessary because an allegation only directly initiates the preliminary investigation. It does not initiate an informal denial, revocation, suspension, or sanction proceeding. Only after the preliminary investigation are these actions taken, when warranted and approved by the Case Status Committee.

Because POST has defined all of its committees in NEW RULE I, it was necessary to delete the Case Status Committee definition in this rule to prevent confusion.

Defining the terms "denial" and "rejection" is necessary to provide clarity and consistency regarding who is entitled to a contested case hearing. Section 44-4-403, MCA, states that an individual whose certification has been denied by POST is entitled to a contested case hearing. A rejection allows for reconsideration or later reapplication, and thus no contested case hearing is warranted, whereas a denial is permanent absent reversal after a contested case hearing. For example, if an officer does not have the sufficient number of years of experience for a certificate, rejection of the officer's application is appropriate, as they are not permanently barred from applying again, when they have achieved the requisite years of experience.

"Equivalency" is provided for in 7-32-303, MCA, and these changes are necessary to define the requirements for equivalency to apply. Historically, POST has allowed officers from out of state to use their training hours and years of service to apply for additional POST certification. During a regular review of its rules, POST recognized the need to define such out-of-state training hours to provide clarity and consistency for officers.

The remaining changes to language and grammar provide clarity and consistency and make POST's definitions easier to understand.

The authorizing and implementing statutes were reviewed and updated.

23.13.103 RECORD OF ALL POST COUNCIL MEETINGS (1) As required by Title 2, chapter 6, MCA, POST will maintain records of all meetings and make those records available for public inspection. The record consists of an audio recording, transcript, or ~~and~~ minutes of the proceedings. ~~The audio recording is the official record of POST meetings.~~ POST will maintain an audio recording of its meetings whenever possible.

AUTH: 2-15-2029, MCA
IMP: 2-3-212, 44-4-403, MCA

REASON: This change is necessary because POST obtains the services of a court reporter or transcriptionist for its council meetings to provide a clear and complete record. In 2021, POST's recording equipment malfunctioned, and the audio recording of the meeting was nearly indiscernible. This rule change allows POST flexibility in creating and maintaining records of its meetings. Typically, POST has minutes or a transcript, and an audio recording of its council and committee meetings. POST recognizes that an audio recording can be beneficial and will continue to maintain recordings whenever feasible.

23.13.104 NOTICE TO THE PUBLIC OF POST COUNCIL ACTIONS OF SIGNIFICANT INTEREST TO THE PUBLIC (1) and (2) remain the same.

(3) Public comment on any public matter within the jurisdiction of POST must be allowed at any public meeting under 2-3-103~~(1)(b)~~, 2-3-202, and 2-3-203, MCA, defining "public matter" and "meeting" and stating the requirements applicable to opening and closing meetings to the public. The opportunity for public comment must be reflected on the meeting agenda and incorporated into the official minutes of the meeting. For purposes of this rule and 2-3-103~~(1)(b)~~, MCA, contested case is defined at 2-4-102~~(4)~~, MCA.

(4) The POST Council or its committees may hold closed or executive sessions if the chair of the POST Council or the chair of the committee determines that:

(a) the matters to be discussed involve issues of individual privacy that clearly exceed the merits of public disclosure; or

(b) the matters to be discussed involve privileged legal communication, including attorney-client communication or attorney work product, or would otherwise have a detrimental effect on POST's litigation position.

(5) A chair's determination regarding whether to hold a closed or executive session may be overruled by a majority vote of the POST Council or committee.

(6) If the POST Council or a committee takes formal action during closed or executive session, the council or committee will announce its formal action on the public record, except when the action involves a legally recognized privilege or if the action would violate an individual's privacy interests.

AUTH: 2-4-201, 2-15-2029, MCA
IMP: 2-3-103, 2-3-104, 2-3-203, 44-4-403, MCA

REASON: This rule is necessary to address changes made in HB 693, passed during the 2023 Montana legislative session. These changes, more broadly, are necessary to fully and fairly inform the public of the reasons that POST may discuss matters in closed or executive session. These changes also provide notice of the process by which executive session may be entered and how a decision to hold executive session may be challenged and overturned.

23.13.204 PURPOSE OF CERTIFICATES ~~(1) Certificates are awarded by the council for the purpose of raising the level of professionalism and skill of public safety officers and to foster cooperation among the council, agencies, groups, organizations, jurisdictions, and individuals.~~

~~(2)~~(1) Basic, intermediate, advanced, supervisory, command, and other certificates are established ~~for the purpose of promoting~~ and awarded by the council to increase the professionalism and skill of public safety officers and to promote ethical behavior, ~~professionalism,~~ education, and experience necessary to adequately perform the duties of a public safety officer.

~~(3)~~(2) Certificates remain the property of the council. The council has the power to recall, deny, sanction, suspend, or revoke any or all certificates upon good cause based on a preponderance of the evidence as determined by the council.

AUTH: 2-15-2029, MCA
IMP: 2-14-2029, 7-32-303, 44-4-403, MCA

REASON: This rule change is necessary because the first two sections of this rule were repetitive, and combining and editing the sections clarify the rule. The addition of "deny" to new (2) is necessary to fully explain the council's authority and to match the definition of "deny" added by these amendments.

23.13.205 GENERAL REQUIREMENTS FOR CERTIFICATION (1) remains the same.

(2) Public safety officers must complete the required basic training as set by the council and Montana law.

(3) All public safety officers must abide by the code of ethics as prescribed in ARM ~~23.13.203~~ 23.13.803. Acceptance of POST certification is an agreement to abide by and adopt the code of ethics and refrain from the behaviors outlined in ARM 23.13.702.

(4) through (5)(a) remain the same.

(b) maintain ethical conduct by upholding and abiding by the code of ethics set forth in ARM ~~23.13.203~~ 23.13.803 and refrain from engaging in any behavior that constitutes a ground for denial, sanction, suspension, or revocation under ARM 23.13.702;

(c) maintain the continuing education and training requirements set forth by the council and ARM ~~23.13.201(2)(k)~~ 23.13.801.

(6) and (6)(a) remain the same.

(b) acceptability of training hours claimed for training received from noncriminal justice sponsored agencies will be determined by the council~~,~~ and requires an application for credit.

(7) No more than 15% of the required training hours will be allowed from in-service training. An officer who wishes to use in-service training hours when applying for intermediate~~,~~ or advanced~~, supervisory, command and other~~ certificates must submit documentation of in-service training hours with the officer's certificate application.

(a) The POST Council is not responsible for maintaining records of the course content supporting regional, online, or in-service training hours acquired to satisfy the requirements of this rule. The ~~employing agency~~ appointing authority or the individual officer must maintain records of the course content supporting regional, online, or in-service training hours acquired to satisfy this rule.

(8) Lateral POST training credit hours may be used to qualify for any certificate on an hour-for-hour basis.

(8) remains the same, but is renumbered (9).

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: This rule change is necessary because in-service training credit hours have not historically been used toward any certificates except intermediate and advanced certificates. The new section regarding lateral credit for out-of-state officers is necessary to explain how these lateral hours are credited. POST has transferred ARM 23.13.201 and ARM 23.13.203, and these edits reflect the new rule numbers per the transfer.

23.13.206 REQUIREMENTS FOR THE BASIC CERTIFICATE (1) remains the same.

(2) In addition to ARM 23.13.204 and 23.13.205, the following are required for the award of the basic certificate:

(a) All Montana ~~P~~public safety officers ~~hired after August 1, 2008,~~ must have completed:

(i) the probationary period prescribed by law or by the current ~~employing agency~~ appointing authority, but in any case, have a minimum of one year discipline-specific ~~employment~~ experience with the current ~~employing agency~~ appointing authority; and

(ii) remains the same.

(b) ~~Public safety officers hired before August 1, 2008, must have:~~

~~(i) completed the probationary period prescribed by the employing agency, and served a minimum of one year with the present employing agency;~~

~~(ii) completed the basic course at the MLEA, or an equivalency as defined by the council; and~~

~~(iii) satisfied the requirements for the basic certificate by their experience, and satisfactorily performed their duties as attested to by the head of the agency for which they are employed.~~

~~(c)~~ Public safety officers with out-of-state training or who have been formerly ~~employed~~ appointed by a ~~designated~~ federal agency, state, tribe ~~tribal entity~~, county, municipality, city, or town who do not have basic certification and are ~~employed~~ appointed by a Montana law enforcement and/or public safety agency:

(i) must have completed the probationary period prescribed by law, but in any case, have a minimum of one year experience with the present ~~employing agency~~ appointing authority;

(ii) whose training or service time is determined by the council, the director, or the director's designee as equivalent to the basic course must successfully complete an equivalency program, approved by the council and administered by the MLEA. The council will require those who fail an equivalency program to successfully complete the basic course at the academy; and

(iii) whose training or service time is determined by the council, the director, or the director's designee as not equivalent to the basic course must, within one year of initial appointment, successfully complete the basic course.

(d) remains the same, but is renumbered (c).

~~(e)~~(d) The council, the director, or the director's designee may grant a one-time extension to the one-year time requirement for public safety officers upon the written application of the officer's appointing authority. The application must explain the circumstances that make the extension necessary. The council may not grant an extension to exceed 180 days. Factors that the council may consider in granting or ~~denying~~ rejecting the extension include but are not limited to:

(i) through (iii) remain the same.

~~(f)~~(e) A public safety officer who has been issued a basic certificate by the council and whose last date of ~~employment~~ service as a public safety officer, in the discipline for which the officer received a basic certificate was less than 36 months prior to the date of the person's present appointment as a public safety officer, in the discipline for which the officer received a basic certificate, is not required to fulfill the basic educational requirements as set forth in these rules.

~~(g)~~(f) If the last date of ~~employment~~ service as a public safety officer, in the discipline for which the officer received a basic certificate, is more than 36 months but less than 60 months prior to the date of present ~~employment~~ appointment as a public safety officer, in the discipline for which the officer received a basic certificate, the public safety officer may satisfy the basic requirement by successfully passing a basic equivalency course administered by the academy. If the public safety officer fails the basic equivalency course, the basic course shall be completed within the time frames set forth in the rules. If no basic equivalency course exists for the public safety officer's specific discipline, then the applicable basic course must be completed within one year of the public safety officer's most recent appointment.

(3) An officer meeting the qualifications outlined above will be issued a basic POST certificate. The discipline of the basic POST certificate issued will correspond to the basic training course the officer attended. ~~POST will consider the completion of the above requirements to constitute the officer's application for a POST basic certificate. However, if an officer wishes to fill out an application form, then POST will also consider that application.~~ POST will not reissue a basic certificate merely to change the discipline listed.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: During a regular review of its rules, the council determined that the prior (2)(a) and (b) were unnecessary and redundant. Deleting these subsections is necessary to clarify the rule and provide consistency. Additionally, the council uses the terms "appointment" and "service" to accurately encompass all public safety officers, because many reserve officers are not employees, but volunteers. It was necessary to delete (3) to align with POST's NEW RULE II. Other housekeeping amendments were made to language and grammar to provide clarity and consistency.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) remains the same.

(2) In addition to ARM 23.13.204 and 23.13.205, a peace officer or probation and parole officer who is an applicant for an award of the intermediate certificate:

(a) ~~must have served at least one year with the present employing agency and be satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;~~

~~(b)~~ must possess the discipline-specific basic certificate; ~~and~~

~~(c)~~(b) must have four years of discipline-specific experience; and

(c) must have 200 combined ~~job-related~~ POST-approved, in-service, or lateral POST training credit training hours as provided in these rules.

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the intermediate certificate:

(a) ~~must have served at least one year with the present employing agency and be satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;~~

~~(b)~~ must possess the discipline-specific basic certificate; ~~and~~

~~(c)~~(b) must have four years of discipline-specific experience; and

(c) must have 144 combined ~~job-related~~ POST-approved, in-service, or lateral POST training credit training hours as provided in these rules.

(4) In addition to ARM 23.13.204 and 23.13.205, a public safety communication officer who is an applicant for an award of the intermediate certificate:

(a) ~~must have served at least one year with the present employing agency and be satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;~~

~~(b)~~ must possess the discipline-specific basic certificate; ~~and~~

~~(c)~~(b) must have four years of discipline-specific experience; and

(c) must have 84 combined ~~job-related~~ POST-approved, in-service, or lateral POST training credit training hours as provided in these rules.

(5) Officers who believe they are eligible for an intermediate certificate must submit a completed application ~~with a verification from the agency administrator that the officer's training meets the requirements of these rules and a recommendation that the applicant should be awarded the certificate, to the director. Applications are available from POST staff or on the POST web site~~ pursuant to [NEW RULE II].

~~(a) The director will review the application and approve or deny the certification, unless the director determines as a matter of discretion that the council's review is necessary due to extenuating circumstances.~~

~~(b) Upon approval by the director, the certificate becomes valid unless the council takes further action.~~

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before March 28, 2020, meets the requirement of (3)~~(b)~~(a).

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: This change is necessary because the requirement that an officer work for his or her current agency for one year to apply for an intermediate certificate does not align with current practice. The requirement is only required for the basic certificate and was mistakenly placed in this rule. It was necessary to delete (5) to align with POST's NEW RULE II. Other amendments were made to language and grammar to provide clarity and consistency.

23.13.208 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) through (2)(a) remain the same.

(b) must have eight years of discipline-specific experience and 400 combined ~~job-related~~ POST-approved, in-service, or lateral POST training credit training hours as provided in these rules.

(3) and (3)(a) remain the same.

(b) must have eight years of discipline-specific experience and 304 combined ~~job-related~~ POST-approved, in-service, or lateral POST training credit training hours as provided in these rules.

(4) and (4)(a) remain the same.

(b) must have eight years of discipline-specific experience and 184 combined ~~job-related~~ POST-approved, in-service, or lateral POST training credit training hours as provided in these rules.

(5) Officers who believe they are eligible for an advanced certificate must submit a completed application ~~with a verification from the agency administrator that the officer's training meets the requirements of these rules and a recommendation that the applicant should be awarded the certificate, to the director. Applications are available from POST staff or on the POST web site~~ pursuant to [NEW RULE II].

~~(a) The director will review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.~~

~~(b) Upon approval by the director the certificate becomes valid unless the council takes further action.~~

(6) remains the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: These changes are necessary to reflect POST's current practice regarding calculating training credit hours required for an advanced certificate. It was necessary to delete the portions of (5) to align with POST's NEW RULE II. Other amendments were made to language and grammar to provide clarity and consistency.

23.13.209 REQUIREMENTS FOR PUBLIC SAFETY OFFICER SUPERVISORY CERTIFICATE (1) through (2)(a) remain the same.

(b) must have successfully completed a minimum of ~~32-hour~~ 32 hours of POST-approved training in a supervisory, management, or leadership topic matter ~~course~~; and

(c) must have served satisfactorily as a first-level supervisor currently and for one year prior to the date of application, as attested to by the head of the ~~employing agency~~ appointing authority.

(3) remains the same.

(4) Officers who believe they are eligible for a supervisory certificate must submit a completed application~~, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site~~ pursuant to [NEW RULE II].

~~(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.~~

~~(b) Upon approval by the director the certificate becomes valid unless the council takes further action.~~

(5) remains the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: These changes are necessary to reflect POST's current practice regarding calculating training credit hours required for a supervisory certificate. It was necessary to delete the portions of (4) to align with POST's NEW RULE II. Other amendments were made to language and grammar to provide clarity and consistency and make the language in this rule consistent with other rules.

23.13.210 REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) through (2)(a) remain the same.

(b) must have completed a professional development course or courses cumulating a minimum of 160 hours or more of ~~a~~ POST-approved ~~professional development course or courses on~~ credit hours in a supervisory, management, or leadership topic matter; and

(c) must have served satisfactorily as a first-level supervisor currently and for one year prior to the date of application, as attested to by the head of the ~~employing agency~~ appointing authority.

(3) Officers who believe they are eligible for a command certificate must submit a completed application~~, with agency administrator approval, to the director.~~

~~Applications are available from POST staff or on the POST web site~~ pursuant to [NEW RULE II].

~~(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.~~

~~(b) Upon approval by the director the certificate becomes valid unless the council takes further action.~~

(4) remains the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: These changes are necessary to reflect POST's current practice regarding calculating training credit hours required for a command certificate. It was necessary to delete the portions of (3) to align with POST's NEW RULE II. Other amendments were made to language and grammar to provide clarity and consistency and make the language in this rule consistent with other rules.

23.13.212 INSTRUCTOR CERTIFICATION REQUIREMENTS (1) remains the same.

(2) A public safety officer providing POST-approved training as defined in these rules must be certified by the council as an instructor.

(3) To qualify as an instructor, the officer ~~shall apply to the council, on a form approved by the council, and shall~~ must meet the following requirements:

(a) through (c) remain the same.

(d) successful completion of a POST-approved instructor development course or its equivalent. Effective October 28, 2017, all instructor development courses must be a minimum of 40 hours in length and must include a minimum of the following:

(i) through (4) remain the same.

(5) Officers who believe they are eligible for any instructor certificate must submit a completed application, pursuant to [NEW RULE II]. The council or the director may ~~deny~~ reject applications for instructor certification for failure to satisfy the required qualifications. The council or the director may recall, suspend, or revoke instructor certificates at any time for good cause to ensure the quality of the training programs.

~~(6) Officers who believe they are eligible for any instructor certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.~~

~~(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.~~

~~(b) Upon approval by the director the certificate becomes valid unless the council takes further action.~~

(7) remains the same, but is renumbered (6).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: These changes are necessary to reflect POST's current practice regarding calculating training credit hours required for an instructor certificate. It was necessary to delete (6) to align with POST's NEW RULE II. Other amendments were made to language and grammar to provide clarity and consistency and make the language in this rule consistent with other rules.

23.13.301 QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES (1) remains the same.

(2) To obtain the status of POST-approved training, training courses must:

(a) ~~meet the requirements for trainee attendance and performance, and the instructor requirements contained in these rules~~ cover topic matter that is relevant to the public safety profession;

(b) through (e) remain the same.

(f) contain course content that has been reviewed and approved by the agency hosting the training, or the ~~employing~~ appointing authority of the officer receiving credit for the training, either before or after the training occurs~~, through the procedures set forth in (3)~~.

~~(3) A POST-certified instructor seeking course credit for public safety officers must have an active POST certificate that is not revoked, suspended, or on probation and must submit an application for accreditation to the director and retain documentation of:~~

~~(a) an education or training record that indicates the officer has received education or training in the specific field, subject matter, or academic discipline to be taught;~~

~~(b) material showing course content, including an agenda, syllabus and/or lesson plan and student handouts; and~~

~~(c) a copy of the course advertisement.~~

~~(4) To receive POST training credit, an agency hosting a training by any other person or entity for a public safety officer or officers must submit an application for accreditation to the director and retain documentation of:~~

~~(a) an instructor certification or training record and an instructor biography;~~

~~(b) material showing course content, including an agenda, syllabus and/or lesson plan and student handouts; and~~

~~(c) a copy of the course advertisement.~~

~~(5) It is the responsibility of the employing authority or any person or entity wishing to receive POST-approved training credit to retain the required documentation set forth in these rules and monitor the standards for training, trainee attendance, and performance as set by the council. Records maintained under this rule are subject to audit by the executive director or the director's designee during normal business hours upon reasonable notice to the agency.~~

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: These changes are necessary to accurately reflect the qualifications that courses must meet to be POST-approved and POST's current practice. It was necessary to delete several sections to align with POST's NEW RULES III and IV. Other amendments were made to language and grammar to provide clarity and consistency.

23.13.302 REQUIREMENTS FOR TRAINEE ATTENDANCE AND PERFORMANCE IN POST-APPROVED COURSES (1) Trainees enrolled in any POST-approved course ~~shall be admitted only in accordance with rules of eligibility and admission as either contained herein or contained in the course announcement~~ must meet all the requirements in this rule in order to obtain POST credit hours.

(2) remains the same.

(3) Any trainee who fails to comply with these rules pertaining to attendance~~,~~ and performance~~, and behavior~~ shall be denied credits.

(4) remains the same.

(5) Failure to comply with the rules contained herein or other guidelines may result in either ~~denial~~ rejection of course approval or a ~~revocation~~ withdrawal of course approval.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: These changes are necessary to accurately reflect the requirements for officers' attendance and performance for POST training credit hours, and the fact that failure to comply results in rejection, not permanent denial, as those terms are defined in these amendments. Other amendments were made to language and grammar to provide clarity and consistency.

23.13.304 THE BASIC COURSES (1) The amount of training ~~for which credit will be granted~~ hours required in any basic public safety officer's course will be ~~prescribed~~ approved by the council.

(2) through (4) remain the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: This change is necessary because POST, in practice, does not use basic training hours toward any other certificates, so credit hours are not applicable to basic courses. POST does, however, approve the number of hours required for basic courses, but does not "prescribe" them in the first instance.

23.13.601 CORONER EDUCATION AND CONTINUED EDUCATION AND EXTENSION OF TIME LIMIT FOR CONTINUED CERTIFICATION (1) remains the same.

(2) New coroners and deputy coroners shall, within one year of appointment as a coroner or deputy coroner, complete the 40-hour basic coroner course at the academy or other equivalent course approved by POST~~:~~.

~~(a) the~~ The basic coroner course must be completed in accordance with 7-4-2905, MCA.

(3) Coroners and deputy coroners must complete 16 hours of continuing coroner education at least once every two years. The two-year time period begins when the coroner or deputy coroner completes the basic coroner course. Subsequent two-year time periods begin when the coroner or deputy coroner completes the 16 hours of continuing education.

(a) The council, the director, or the director's designee may extend the two-year time limit requirement for the continuation of coroner's certification, set forth in 7-4-2905, MCA, upon the written application of the coroner or the appointing authority of the deputy coroner. The application must explain the circumstances which necessitate the extension;

(b) Factors considered in granting or ~~denying~~ rejecting an extension include, but are not limited to:

(i) through (iii) remain the same.

(c) The council may not grant an extension to exceed 180 days from the date the two-year time-period lapses~~; and~~.

~~(d) The council will not grant extensions after the expiration of the two year time limit.~~

(4) Any coroner or deputy coroner who fails to complete 16 hours of continuing coroner education every two years, as required, must reattend the 40-hour coroner basic academy. Any coroner or deputy coroner who has received an extension pursuant to this rule and fails to complete 16 hours of continuing coroner education within the period of the extension, must reattend the 40-hour coroner basic academy.

AUTH: 2-15-2029, 7-4-2905 MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: These changes are necessary to reflect current practice at POST and to match the correct time-period methodology identified in a Letter of Advice from the Montana Attorney General's Office. Due to issues with officers working shifts which, at times, may fall on a weekend or holiday, POST has determined it is unreasonable to require extensions to be granted prior to the expiration of the two-year time period. This also provides greater equity, as there are no such requirements on other extensions that may be requested for meeting a training requirement. The change also clarifies that the 180-day potential extension is from the deadline, not from the date on which the extension is granted. These edits also provide a clear remedy for a coroner's failure to meeting the training requirements, and reflect POST's practice. Other edits to language and grammar provide greater clarity and consistency.

23.13.702 GROUNDS FOR DENIAL, SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) remains the same.

(2) The public safety officer's ~~employing~~ appointing authority must report to the executive director any substantiated grounds for denial, sanction, suspension, or revocation of POST certification as enumerated in (3).

(a) If review of an officer's conduct is pending before any court, council, tribunal, or agency, the ~~employing~~ appointing authority ~~may wait for a final adjudication before reporting~~ must report the officer's conduct to the executive director and may request that POST take no action until final adjudication. Such a request will be granted or rejected based upon a majority vote of the Case Status Committee.

(b) If ~~the~~ an officer's conduct results in termination of the officer's ~~employment~~ service, the notice requirements of 7-32-303, MCA, and ARM ~~23.13.216~~ 23.13.806 apply.

(3) The grounds for denial, sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) willful falsification of any information in conjunction with official duties, or any single occurrence or pattern of lying, perpetuating falsehoods, or dishonesty which may tend to undermine public confidence in the officer, the officer's ~~employing~~ appointing authority, or the profession;

(b) a physical or mental condition that substantially limits the officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that has not been or cannot be eliminated or overcome by reasonable accommodation provided by the appointing authority;

(c) remains the same.

(d) unauthorized use of or being under the influence of an intoxicating substance, including alcoholic beverages or marijuana, while on duty, or the use of an intoxicating substance, including alcoholic beverages or marijuana, in a manner which tends to discredit the officer, the officer's ~~employing~~ appointing authority, or the profession;

(e) conviction of a criminal offense enumerated in Title 45, chapters 5 through 10, MCA, or Title 61, chapter 8, part ~~4~~ 10, MCA, or an offense which would be a criminal offense enumerated in Title 45, chapters 5 through 10, MCA, or Title 61, chapter 8, part ~~4~~ 10, MCA, if committed in this state;

(f) remains the same.

(g) willful violation of the code of ethics set forth in ARM ~~23.13.203~~ 23.13.803;

(h) ~~conduct which, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the employing authority's integrity or the officer's honesty, integrity, or fitness as an officer;~~

~~(i)~~ failure to meet the minimum standards for appointment or continued ~~employment~~ service as a public safety or peace officer set forth in these rules or Montana law;

(j) through (n) remain the same, but are renumbered (i) through (m).

(4) remains the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: POST staff have received increasing numbers of inquiries from appointing authorities regarding reporting allegations of misconduct which may still be under investigation or review. These changes are necessary to provide clear direction to appointing authorities, and to avoid any perception that appointing authorities are withholding allegations of misconduct, in addition to conforming with current and preferred practice. Additional changes have been made to clarify that this rule applies to all public safety officers, including volunteer reserve officers who are not "employees." Deletion of (3)(h) is necessary to remove redundant language included in another subsection. Other edits to language and grammar provide greater clarity and consistency.

23.13.703 PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR (1) remains the same.

(2) Any allegation made against a public safety officer that states potential grounds for denial, sanction, suspension, or revocation of POST certification must ~~be made~~ initially be provided to the ~~employing~~ appointing authority of the officer in question for review and recommendation ~~by the individual making the allegation~~, unless the ~~employing~~ appointing authority is making the allegation. All allegations must be made in writing unless the director initiates the allegation. Anonymous allegations will not be considered unless the director determines that public safety may be threatened if POST takes no action on an anonymous allegation.

(3) Except as provided in this section, POST will not proceed with an allegation unless the individual making the allegation or POST staff has notified the ~~employing~~ appointing authority of the allegation. This requirement does not apply if the allegation has been made against the highest-ranking officer in the agency, who would otherwise constitute the ~~employing~~ appointing authority, ~~and~~ or there is some reason to believe that the investigation or public safety would be put in danger by such a notification.

(4) Within 30 days of being notified of the allegation, or in making its own allegation of misconduct, the ~~employing~~ appointing authority must give POST a notice of the ~~employing~~ appointing authority's investigation, action, ruling, finding, or response to the allegation, in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question, and which may contain a recommendation from the ~~employing~~ appointing authority regarding whether POST should impose a sanction. If the ~~employing~~ appointing authority recommends POST impose a sanction, the ~~employing~~ appointing authority must state what sanction the ~~employing~~ appointing authority deems reasonable. POST shall consider but is not bound by the recommendation of the ~~employing~~ appointing authority. If available, a copy of the initial allegation made to the ~~employing~~ appointing authority and the ~~employing~~ appointing authority's written response must be forwarded to the director. The ~~employing~~ appointing authority may make a written request to the director for additional time to respond. Such a request must provide good cause as to the reason more time is required. The director may grant or deny requests for additional time at the director's discretion.

(5) After the ~~employing~~ appointing authority has been notified and given the opportunity to act, the director or POST staff may accept an allegation to be presented to the case status committee. If an allegation is received from an ~~employing agency~~ appointing authority, the executive director may, if appropriate under the circumstances, send a "Letter 1" (as described in the POST Council's policy and procedure adopted under (1)) to the officer prior to consultation with the Case Status Committee, provided the director notify the committee of the Letter 1 as soon as practicable.

(a) through (b)(i) remain the same.

(ii) the name and ~~place of employment~~ appointing authority of the officer;

(iii) through (c) remain the same.

(d) An ~~employing~~ appointing authority or the Montana Law Enforcement Academy may submit a written allegation on the agency's letterhead with supporting documents that the agency deems appropriate.

(6) The director may initiate an allegation, based on good cause and reliable information, and must follow the procedure set forth in this rule as if initiated by any other individual, including but not limited to submitting the complaint to the ~~employing~~ appointing authority.

(7) After an allegation has been received or has been initiated by the director, the director, in consultation with the Case Status Committee and contested case counsel for POST, will determine whether to dismiss the allegation, or open a preliminary investigation and correspond with the respondent in writing.

(a) All such correspondence must be copied to the ~~employing~~ appointing authority, unless the exception noted in (3) applies.

(b) remains the same.

(c) The purpose of this correspondence is to allow the officer to respond to the allegation, allow the Case Status Committee, the director, and contested case counsel to gather more information, and allow the parties to reach an informal resolution.

(8) After an allegation is made by or filed with the director, and upon a majority vote of the Case Status Committee, the director, contested case counsel for POST, or other POST staff or designees will ~~investigate~~ conduct a preliminary investigation of the complaint.

(9) Following the review and preliminary investigation of an allegation, communication with the respondent, communication with the ~~employing~~ appointing authority, and consultation with counsel for POST, and based upon a majority vote of the Case Status Committee, the director may take any appropriate action, including but not limited to the following:

(a) engage in informal negotiations and settlement discussions and enter into a stipulation or memorandum of understanding with the officer or the officer's counsel, or otherwise informally resolve the complaint. An informal resolution reached before the MAPA contested case hearing stage under this subsection is not subject to approval by the council, but must be approved by a majority vote of the Case Status Committee;

(b) remains the same.

(c) make one of the following findings, upon a majority vote of the Case Status Committee:

(i) No finding: The investigation cannot proceed for reasons that include but are not limited to: the complainant failed to disclose promised information to further the investigation; ~~or~~ the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) ~~or employee(s)~~ involved.

(ii) Not sustained: ~~The~~ POST's review or investigation failed to discover sufficient evidence to prove or disprove the allegations.

(iii) Sustained: ~~The~~ POST's review or investigation disclosed a preponderance of evidence to prove the allegation(s).

(iv) Unfounded: ~~The~~ POST's review or investigation disclosed that the complainant made a false allegation, the subject of the complaint was not involved in the incident, or the incident did not occur.

(v) Exonerated: ~~The~~ POST's review or investigation disclosed that the incident occurred, but the subject of the complaint acted lawfully and in a manner consistent with the agency's policy and procedures.

(d) issue the appropriate denial, sanction, suspension, or revocation of a certificate upon a majority vote of the Case Status Committee;

(e) if a denial, sanction, suspension, or revocation is imposed, the director must provide a notice of agency action in writing to the officer, satisfying the notice required by 2-4-601, MCA. Such notice must be mailed to the officer's last known mailing address, unless the officer consents to receiving email notification;

(f) and (10) remain the same.

(11) In all cases in which a written allegation is submitted which does not culminate in a MAPA contested case hearing, the director must file a written report in the officer's POST file setting forth the circumstances and resolution of the case. All written correspondence with the officer and the officer's ~~employing~~ appointing authority must also be maintained in the officer's POST file.

AUTH: 2-4-201, 2-15-2029, MCA
IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: These changes are necessary to accurately describe the requirement that allegations first be directed to the appointing agency and to reflect the role of the Case State Committee, as formalized by the council in 2022. Additional changes to language and grammar provide greater clarity and consistency and consistency.

23.13.704 REQUESTS FOR A FORMAL CONTESTED CASE HEARING UNDER MAPA (1) If the director, upon a majority vote of the Case Status Committee, denies, sanctions, suspends, or revokes an officer's POST certification pursuant to ARM 23.13.703~~(9)~~ and the officer receives a notice of agency action, then the officer has the right to request a formal contested case proceeding under MAPA, to include a hearing, pursuant to 44-4-403~~(3)~~, MCA.

(a) The proceedings and hearing can only be initiated by a written request from the officer whose certificate was denied, sanctioned, suspended, or revoked, or the officer's attorney, and not by any other person or entity.

(b) To request a hearing, the officer must follow the instructions contained in the "notice of agency action" and notify the appropriate individual or the director that the officer requests a hearing within 30 days of the date of the notice of agency action. A hearing request must identify by paragraph number the specific factual allegations or law in the notice of agency action with which the respondent disagrees. It may also include a response to the allegations set forth in the notice of agency action.

(c) Failure to notify and request a hearing within 30 days of the date of the notice of agency action will constitute a waiver of the right to a hearing, and the notice of agency action will become the final agency decision.

(2) Any public safety officer or ~~employing~~ appointing authority aggrieved by a decision of the director, other than a decision by the director to deny, sanction, suspend, or revoke a certificate, that is not a final decision following a contested case hearing, as provided in 2-4-623, MCA, may request the ~~denial~~ director's decision be placed on the agenda for consideration by the council at the council's next regularly scheduled meeting.

AUTH: 2-15-2029, MCA
IMP: 2-4-201, 2-15-2029, 44-4-403

REASON: These changes to the contested case hearing request procedure is necessary to reflect current practice at POST. The addition to (1)(b) is necessary to add to the rule POST's practice requirement, explained in the director's decision letter, that the written notice identify the specific factual allegations or legal conclusions contested by the officer. Additional changes to language and grammar provide greater clarity and consistency. The ARM and MCA earmarks were removed per the Secretary of State's rulemaking guidelines.

23.13.705 FORMAL MAPA CONTESTED CASE PROCEEDINGS

(1) remains the same.

(2) Contested case proceedings may be commenced only after the requirements of ARM 23.13.704 have been met and an officer ~~or other aggrieved person~~ has requested a hearing.

(3) remains the same.

(4) In cases under ARM 23.13.704~~(2)~~, the respondent's failure to respond, appear, or otherwise defend a notice of agency action of which the respondent has had notice, may result in the hearing examiner finding the officer in default and entering an order against the officer containing findings of fact, conclusions of law, and an opinion in accordance with MAPA, Montana Rules of Civil Procedure, and any other rule of law applicable.

(5) remains the same.

(6) In cases under ARM 23.13.704~~(2)~~, contested case counsel for POST will represent the director during the proceedings.

AUTH: 2-4-201, 2-15-2029, MCA
IMP: 2-4-201, Title 2, chapter 4, part 6, 2-15-2029, 44-4-403, MCA

REASON: These changes are necessary to accurately reference the correct subsection of ARM 23.13.704, as amended in September of 2022. The ARM earmarks were removed per the Secretary of State's rulemaking guidelines.

23.13.713 CONTESTED CASES – HEARING EXAMINERS (1) The POST Council chair, ~~or~~ the director, or the director's designee may appoint a hearing examiner to conduct a hearing in a contested case, as allowed by 2-4-611, MCA.

(2) remains the same.

(3) If a hearing examiner is appointed in a contested case proceeding, notice must be provided to the public safety officer ~~or other party~~ with the notice of agency action or immediately after the officer requests a hearing pursuant to 44-4-403, MCA.

(4) Pursuant to 2-4-611~~(4)~~, MCA, the POST Council may disqualify a hearing examiner if a party shows by affidavit the existence of personal bias, lack of independence, disqualification by law, or other ground for disqualification.

(5) If a hearing examiner is disqualified or recuses himself or herself for good cause, the director, the director's designee, or the POST Council chair may appoint a replacement.

(6) remains the same.

AUTH: 2-4-201, 2-15-2029, MCA
IMP: 2-4-201, 2-4-202, 2-4-611, 2-4-612, 44-4-403, MCA

REASON: In 2021 and 2022, POST staff experienced times when the director was absent from the office. These changes are necessary to ensure that the business of the POST Council, specifically naming a hearing examiner, can continue when the director is unavailable. Additionally, the deletion in (3) ensures that this rule comports with 44-4-403, MCA, which provides that only a public safety officer whose certification has been denied, suspended, or revoked may request a contested case hearing. The ARM earmark in (4) was removed per the Secretary of State's rulemaking guidelines.

23.13.714 CONTESTED CASE HEARING (1) through (7) remain the same.

(8) At the contested case hearing under ARM 23.13.704~~(2)~~:

(a) POST has the burden of proving by a preponderance of the evidence that there was good cause for the denial, sanction, suspension, or revocation of certification imposed by the director, and based upon a majority vote of the Case Status Committee, as stated in the notice of agency action;

(b) and (c) remain the same.

AUTH: 2-4-201, 2-15-2029, MCA
IMP: 2-4-201, 2-4-202, 2-4-611, 2-4-612, 44-4-403, MCA

REASON: These changes are necessary to indicate the formal role of the Case Status Committee and provide additional clarification concerning the Case Status Committee's role. The ARM earmark in (8) was removed per the Secretary of State's rulemaking guidelines.

23.13.716 CONTESTED CASES, EX PARTE COMMUNICATIONS

(1) Except as provided in (4), ~~P~~pursuant to 2-4-613, MCA, ex parte communication by a party or a party's agent with the hearing examiner, the council, any individual member of the council, or any person authorized to participate in the decision of the contested case, is expressly prohibited unless otherwise authorized by law.

(2) and (3) remain the same.

(4) The following council members may have ex parte contact:

(a) current members of the Case Status Committee; and

(b) former members of the Case Status Committee who participated in decision-making concerning the contested case; and

(c) any council member who is a material witness in the contested case. If a council member acts as a material witness, that member may not participate in the council's deliberation or decision in the contested case.

AUTH: 2-4-201, 2-15-2029, MCA
IMP: 2-4-201, 2-4-202, 2-4-613, 44-4-403, MCA

REASON: These changes are necessary to allow POST counsel to have ex parte contact with certain necessary council members, as demonstrated by a previous contested case where a council member was a witness as an agency administrator. The rule clarifies that, in such instances, the member will not participate in the council's final deliberations or decision in the case.

23.13.719 DECISION AND ORDER, STAYS (1) After completing a contested case proceeding, the hearing examiner shall, within ~~30~~ 45 days of the hearing, or completion of post-hearing briefing, issue findings of fact and conclusions of law that would, if adopted by the council, meet the requirements of 2-4-623, MCA.

(2) The council shall receive briefs and hear oral arguments at a regularly scheduled meeting and deliberate pursuant to 2-4-621, MCA. For the period between the submission of the hearing examiner's decision and oral argument before the council, the council chair will appoint general counsel to the council or another individual to act as a special master for purposes of resolving any issue arising before the council hears argument.

~~(2)~~(3) Within 15 days after the hearing examiner has issued findings, conclusions, and a proposed decision, the council chair will appoint the special master. Within 21 days after written notice of the appointment of a special master, an adversely affected party may submit exceptions to the hearing examiner's decision. ~~The council shall receive briefs and hear oral arguments at its next meeting and deliberate pursuant to 2-4-621, MCA.~~ The party filing the exceptions must incorporate a supporting brief in the document stating the exceptions. The opposing party may file a brief in response to the exceptions within ~~ten~~ 21 days. No reply brief will be received.

~~(3) For the period between the submission of the hearing examiner's decision and the hearing before the council, general counsel for the council or another person~~

~~designated by the council chair will act as a special master for purposes of resolving any issue arising before the council hearing.~~

(4) Unless a different argument order is set by the special master for good cause, the order of oral argument is as follows:

(a) argument by the aggrieved party;

(b) argument by the opposing party;

(c) final statements or rebuttal by the aggrieved party;

(d) final statements or rebuttal by the opposing party; and

(e) deliberations by the council, which may include questions of the parties by the council.

(5) A minimum of six available council members must be present to issue a decision. If six available council members are not present, the council will reset the oral argument for its next regularly scheduled meeting or set a special meeting to hear argument.

~~(4)~~(6) After deliberating, the council will decide, by majority vote, to adopt, reject, or modify the hearing examiner's findings and recommendation. The council will issue a decision and order pursuant to 2-4-623, MCA, and mail a copy of this decision to the respondent or the respondent's legal representative.

~~(5)~~(7) If a party has filed exceptions to the decision of the hearing examiner, the contested case is not considered to be submitted for decision under 2-4-623~~(1)~~, MCA, until oral arguments are concluded before the council.

~~(6)~~(8) If a certificate was denied, revoked or suspended by the director, based upon a majority vote of the Case Status Committee, before the hearing, the certificate will remain denied, revoked or suspended pending the outcome of the contested case proceeding and the respondent must surrender the certificate(s) to the council and forfeit the position, authority, and powers afforded the officer in this state while the contested case proceeds. However, the hearing examiner, before the contested case hearing, or the special master designated in (3), after the hearing, may, upon a properly supported motion that affords POST adequate opportunity to respond, stay the denial, suspension or revocation for good cause shown.

(7) remains the same, but is renumbered (9).

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: In response to questions posed to POST staff asking for additional clarity regarding post-hearing procedure, these changes are necessary to provide a more reasonable and workable timeline for issuance of the hearing officer's decision, and for exceptions briefing, and also to provide a clear process for argument before the council, including the appointment and role of the special master. These changes are also necessary to clarify the process for the standing master or the council chair to determine whether a quorum exists to hear oral argument and issue a decision. The MCA earmark in (7) was removed per the Secretary of State's rulemaking guidelines.

23.13.720 CONTESTED CASES, SETTLEMENT OR STIPULATION AND PROCESS FOR REVIEW BY THE POST COUNCIL (1) through (1)(b)(i) remain the same.

(ii) if the council rejects the agreement, then the parties must provide the hearing examiner with an excerpt of the official record of the POST meeting in which the council rejected the agreement. The contested case proceeds as though there had been no agreement.

(2) remains the same.

AUTH: 2-4-201, 2-15-2029, MCA
IMP: 44-4-403, MCA

REASON: This change is necessary to provide clarity and consistency in this rule.

23.13.721 APPEALS (1) ~~A~~ The final POST Council decision rendered after a contested case proceeding is the final agency decision subject to judicial review pursuant to 2-4-702 and 44-4-403, MCA.

AUTH: 2-15-2029, MCA
IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: These changes are necessary to provide clarity and consistency in this rule and to accurately reflect the statutes governing appeals of council decisions.

23.13.801 MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) All public safety officers must be certified by POST and meet the applicable appointment, employment, education, and certification standards as prescribed by the Montana Code Annotated.

(2) through (2)(f) remain the same.

(g) successfully complete an oral interview ~~and pass a thorough background check~~ conducted by the appointing authority or its designated representative;

(h) and (i) remain the same.

(j) abide by the code of ethics contained in ARM ~~23.13.203~~ 23.13.803; and

(k) complete, within every two calendar years, 20 hours of documented agency in-service, roll call, field training, or POST-approved continuing education training credits, which include but are not limited to a professional ethics curriculum covering the following topics and any additional topics required by the council:

(i) a review of the ~~C~~code of ~~E~~ethics ARM ~~23.13. 203~~ 23.13.803 and Grounds for Denial, Sanction, Suspension, and Revocation ARM 23.13.702;

(ii) review of the ~~annual~~ current POST integrity report;

(iii) discussion involving core values of each ~~employing agency~~ appointing authority which may include integrity, honesty, empathy, sympathy, bravery, justice, hard work, kindness, compassion, and critical thinking skills;

(iv) through (3) remain the same.

(4) The POST Council is not responsible for maintaining records of continuing education hours acquired to satisfy the requirements of (2)(j) and (2)(k).

The ~~employing agency~~ appointing authority must maintain records of the administration of the oath and the continuing education hours acquired to satisfy (2)(j) and (2)(k). Agency records maintained under this rule are subject to audit by the executive director during normal business hours upon reasonable notice to the agency.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: During a regular review of its rules, POST determined that it is necessary to create a new subchapter for rules regarding appointment and continued service of public safety officers. This rule is not a certification rule, which is what subchapter two contains; therefore, it is necessary to transfer the rule. This allows the public and stakeholders to easily locate and review rules regarding appointment and service of public safety officers. Amendments to this rule are necessary to ensure that the rule reflects POST's current business practices. In 2023, POST began updating its integrity report monthly rather than annually. These amendments also clarify that the rule applies to all public safety officers, including reserve officers who are volunteers rather than employees. Deletion of the language regarding a background check in (2)(g) removes duplicative language which is already present in (2)(e).

23.13.803 CODE OF ETHICS (1) All public safety officers who have been ~~hired or employed~~ appointed by any ~~agency or entity~~ appointing authority in Montana, or who have been certified by POST, or who have attended an MLEA basic class must abide by the code of ethics contained herein.

(2) All public safety officers hired or sworn before this rule's effective date are also bound by the code of ethics contained in this rule. Continued ~~employment~~ service as a public safety officer in Montana constitutes an agreement to be bound by this code of ethics. Failure to comply with or violation of any part of the code of ethics may be grounds for denial, suspension, sanction, or revocation of any POST certificate.

(3) remains the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 7-32-303, 44-4-403, MCA

REASON: During a regular review of its rules, POST determined that it is necessary to create a new subchapter for rules regarding appointment and continued service of public safety officers. This rule is not a certification rule, which is what subchapter two contains; therefore, it is necessary to transfer the rule. This allows the public and stakeholders to easily locate and review rules regarding appointment and service of public safety officers. The changes to this rule are necessary to clarify that the rule applies to all public safety officers, including reserve officers who are volunteers rather than employees.

23.13.804 ~~EMPLOYMENT~~ APPOINTMENT AND TRAINING OF RESERVE OFFICERS (1) An agency that appoints a reserve officer pursuant to 7-32-213, MCA, must submit a completed ~~employment status~~ notice of appointment form to the director within ten days of appointing the reserve officer. Within ten days of a reserve officer's termination, the appointing authority must submit a completed notice of termination form to the director.

(2) The ~~employing agency~~ appointing authority is responsible for training the reserve officer. The reserve officer must complete a minimum of the training ~~as~~ prescribed in 7-32-214, MCA, ~~this rule~~ within two years of the reserve officer's initial appointment, unless the reserve officer was or is a Montana peace officer who has attended the law enforcement officer basic academy at MLEA.

~~(3) Training must, at a minimum, consist of the courses and hours listed in 7-32-214(1), MCA.~~

~~(4) Upon notice of the reserve officer's qualification, made by the reserve officer's agency head to the director on a form approved by the council, POST will issue a reserve officer basic certificate to the reserve officer.~~

AUTH: 2-15-2029, MCA
IMP: 7-32-214, 44-4-401, 44-4-403, MCA

REASON: During a regular review of its rules, POST determined that it is necessary to create a new subchapter for rules regarding appointment and continued service of public safety officers. This rule is not a certification rule, which is what subchapter two contains; therefore, it is necessary to transfer the rule. This allows the public and stakeholders to easily locate and review rules regarding appointment and service of public safety officers. The changes to this rule are necessary to clarify that the rule applies to all reserve officers, including reserve officers who are volunteers rather than employees, to clarify that notice of termination is required, and to conform to current form practice. Further, (3) is rendered unnecessary, given the changes to (2), and NEW RULE II makes the language in (4) redundant.

23.13.805 FIREARMS PROFICIENCY STANDARDS FOR APPOINTMENT AND CONTINUED SERVICE (1) Each agency that ~~employs~~ appoints a public safety officer who is authorized to carry firearms during the work assignment must:

(a) require the officer to complete successfully the firearms proficiency requirements provided in this rule at least once a year, for any manufacture and model of firearm customarily carried by that officer while the officer is on duty;

(b) designate a firearms instructor ~~as defined in these rules~~ to conduct or oversee and document annual firearms proficiency. The instructor need not be a POST-certified instructor but must have attended a minimum 40-hour POST-approved firearms instructor course or its equivalent, which includes the following topics:

(i) through (5) remain the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 7-32-303, 44-4-403, MCA

REASON: During a regular review of its rules, POST determined that it is necessary to create a new subchapter for rules regarding appointment and continued service of public safety officers. This rule is not a certification rule, which is what subchapter two contains; therefore, it is necessary to transfer the rule. This allows the public and stakeholders to easily locate and review rules regarding appointment and service of public safety officers. These changes are necessary to clarify that this rule applies to all reserve officers, including reserve officers who are volunteers rather than employees. These changes are also necessary to specify that officers only need to qualify on firearms they carry on duty. Further, in May of 2023, the council amended this rule and removed the requirement that a firearms instructor be a certified instructor as defined in ARM 23.13.212. The deleted language in (1)(b) was inadvertently left in the rule, and this change is necessary to remedy that error.

23.13.806 PUBLIC SAFETY OFFICER ~~EMPLOYMENT~~ APPOINTMENT, EDUCATION, AND CERTIFICATION STANDARDS (1) and (2) remain the same.

(3) A public safety officer's ~~employing~~ appointing authority must provide written notice to POST within 10 days of the appointment, termination, resignation, or death of the public safety officer.

AUTH: 2-15-2029, MCA
IMP: 7-32-303, 44-4-403, MCA

REASON: During a regular review of its rules, POST determined that it is necessary to create a new subchapter for rules regarding appointment and continued service of public safety officers. This rule is not a certification rule, which is what subchapter two contains; therefore, it is necessary to transfer the rule. This allows the public and stakeholders to easily locate and review rules regarding appointment and service of public safety officers. The amendment is necessary to clarify that this rule applies to all reserve officers, including reserve officers who are volunteers rather than employees.

23.13.807 REQUIREMENTS FOR SWAT PRIMARY COURSE CREDIT

(1) To receive POST approval for a SWAT primary course, a course must meet the following requirements:

(a) through (a)(ii) remain the same.

(iii) weapons, munitions, and equipment to include ~~live fire~~ safe weapon manipulation, close quarter defense, crisis negotiations, intelligence gathering/ground reconnaissance, preplanning tactics, walk through, breaching techniques;

(iv) and (v) remain the same.

(2) The director or the director's designee will review applications and approve or ~~deny~~ reject POST credit pursuant to these rules, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(3) remains the same.

AUTH: 2-15-2029, MCA

IMP: 44-4-403, MCA

REASON: In July of 2023, the Montana tactical commanders and instructor cadre who have been instructing the SWAT primary course submitted the proposed change to (1)(a)(iii). This change is necessary to ensure that course participants are receiving relevant instruction regarding safe weapon manipulation. Many participants return to their respective agencies and are required to pass the agencies' qualifications and standards, making the live fire portion of the course redundant or potentially conflicting with agency standards. Additionally, POST deems the transfer of this rule necessary to accurately reflect that it is a training rule and not a rule regarding certification.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Katrina Bolger, Montana POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; fax (406) 444-9978; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., January 26, 2024.

6. J. Stuart Segrest, General Counsel to the POST Council, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ JESSE SLAUGHTER
Jesse Slaughter
Chair
Montana POST Council

Certified to the Secretary of State November 28, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULES I through V and the repeal of ARM 24.216.101, 24.216.201, 24.216.202, 24.216.402, 24.216.502, 24.216.503, 24.216.506, 24.216.508, 24.216.511, 24.216.512, 24.216.2102, 24.216.2104, and 24.216.2301 regarding registered sanitarians and sanitarians-in-training	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On January 4, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/89224266314
Meeting ID: 892 2426 6314, Passcode: 303704
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 892 2426 6314, Passcode: 303704

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on December 28, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL REASONABLE NECESSITY: In support of the Governor's Red Tape Relief Initiative, the Department of Labor and Industry (department) is conducting comprehensive reviews of the administrative rules of the professional licensing boards and programs administratively attached to the department. This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations and those duplicated in statute. Other changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for customers and staff. The streamlined rules will increase department efficiencies by further standardizing procedures used among all licensing boards and programs.

The 2023 Montana Legislature enacted Chapter 484, Laws of 2023 (Senate Bill (SB) 457), an act generally revising laws related to sanitarians and sanitarians-in-training and transferring regulatory oversight from the Board of Sanitarians to a

department program. The bill was signed by the Governor on May 8, 2023, and became effective October 1, 2023. It is reasonably necessary to repeal the board's rules and adopt new, updated program rules to implement the bill.

The department determined it is reasonably necessary to repeal thirteen rules and adopt five new rules to align with the Red Tape Relief Initiative and implement the 2023 legislative changes. The new program rules will be placed in a new ARM chapter. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following the specific rule.

4. The proposed new rules are as follows:

NEW RULE I FEE SCHEDULE

(1) Application	$200
(2) Renewal	175

(3) Additional standardized fees are in ARM 24.101.403.

(4) All fees are nonrefundable.

AUTH: 37-40-203, MCA
IMP: 37-40-301, 37-40-302, MCA

REASON: The department is repealing ARM 24.216.402 and replacing it with this new rule. The department is eliminating inactive status for this program because the historically consistent small number of inactive sanitarians does not justify the staffing and costs associated with monitoring and renewing them.

Because practicing under a sanitarian-in-training permit is a step within the sanitarian application process, it is reasonable to have only a single application. All applicants will utilize a sanitarian application and those wanting to work while completing the microbiology course and examination will receive a sanitarian-in-training permit. This change also streamlines the application process and eliminates redundancy for applicants.

As of July 1, 2023, the board's cash balance is $130,836 and its appropriation is $47,027. The board currently has excessive cash in violation of 17-2-302, MCA. Following the shift from board to program, the department will abate fees in fiscal year (FY) 2024 and 2025, which will reduce the cash balance by $21,515 in FY 2024 and $22,652 in FY 2025. At the beginning of FY 2026, the program is projected to have $86,669, which is within the statutory limit of $94,054.

The department is proposing to reduce renewal fees by 35% to help ensure the program's cash balance stays within statutory parameters. The department estimates the cumulative fee changes will affect approximately 190 applicants/licensees and result in a $21,170 reduction in annual revenue.

NEW RULE II EXAMINATION (1) Sanitarian applicants must pass the National Environmental Health Association (NEHA) examination or its equivalent.

AUTH: 37-40-203, MCA
IMP: 37-40-302, MCA

REASON: The department is repealing ARM 24.216.503 and replacing it with this simplified rule. The required examination and process are not changed.

NEW RULE III EDUCATION EQUIVALENCY (1) An equivalent degree per 37-40-302, MCA, is a bachelor's degree from an accredited college or university having a minimum of 45 quarter or 30 semester hours in the physical and biological sciences, including courses in chemistry, biology, and at least one general microbiology course. Acceptable general microbiology courses must focus on basic microbiology concepts including the activities of bacteria, viruses, and other microorganisms, and their impact on humans. Courses focusing primarily on cellular biochemistry, cellular genetics, and intracellular functions are not acceptable.

AUTH: 37-40-203, MCA
IMP: 37-40-302, MCA

REASON: It is reasonably necessary to adopt this rule to replace ARM 24.216.502. This new rule clearly states the education considered equivalent to a bachelor's degree in environmental health in 37-40-302(2), MCA.

NEW RULE IV SANITARIAN-IN-TRAINING (1) Applicants meeting all licensure qualifications except for the approved microbiology course per [NEW RULE III] will be issued a sanitarian-in-training permit and must pass the microbiology course during the one-year permit period.

(2) Sanitarians-in-training who work must do so under the supervision of a registered sanitarian.

(a) Applicants must provide the supervisor's name and description of the expected work experience to the department.

(b) "Supervision" means the supervisor is available for immediate communication and consultation.

AUTH: 37-40-203, MCA
IMP: 37-40-203, MCA

REASON: It is reasonably necessary to repeal ARM 24.216.506 and replace it with this rule to provide the requirements for working under a sanitarian-in-training permit.

Applicants may or may not work while completing the microbiology course and supervised experience is not a licensure requirement. It is reasonable to eliminate the supervision plan and final record of supervision requirements and instead require the supervisor's name and a description of the work experience.

NEW RULE V UNPROFESSIONAL CONDUCT (1) In addition to the provisions of 37-1-410, MCA, it is unprofessional conduct for registered sanitarians and sanitarians-in-training to:

(a) violate a federal, state, or local law or rule relating to the conduct of the profession;

(b) fail to cooperate with or respond to a department request;

(c) fail to properly supervise a sanitarian-in-training; and

(d) commit any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice.

AUTH: 37-40-203, MCA
IMP: 37-1-410, MCA

REASON: The department is repealing ARM 24.216.2301 and replacing it with this simplified unprofessional conduct rule. This new rule eliminates unnecessary duplication with the unprofessional conduct statute, 37-1-410, MCA. Instead of stating specific state or federal regulations to follow, the department is including (1)(a) to require that licensees comply with all applicable laws and regulations related to the conduct of the sanitarian profession.

5. The rules proposed to be repealed are as follows:

24.216.101 BOARD ORGANIZATION

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: It is reasonably necessary to repeal this rule, ARM 24.216.201, and 24.216.202 to implement SB 457 which eliminated the board and transferred regulation of sanitarians and sanitarians-in-training to the department. There is no need to incorporate the department's own rules.

24.216.201 PROCEDURAL RULES

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

24.216.202 PUBLIC PARTICIPATION

AUTH: 2-3-103, MCA
IMP: 2-3-103, MCA

24.216.402 FEE SCHEDULE

AUTH: 37-1-134, 37-40-203, MCA
IMP: 37-1-134, 37-1-141, 37-40-301, 37-40-302, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE I. See REASON for NEW RULE I.

24.216.502 MINIMUM STANDARDS FOR SANITARIANS AND SANITARIANS-IN-TRAINING

AUTH: 37-1-131, 37-40-203, MCA

IMP: 37-40-302, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE III. See REASON for NEW RULE III.

24.216.503 EXAMINATION

AUTH: 37-1-131, 37-40-203, MCA
IMP: 37-1-131, 37-40-302, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE II. See REASON for NEW RULE II.

24.216.506 SANITARIAN-IN-TRAINING

AUTH: 37-1-131, 37-40-203, MCA
IMP: 37-1-131, 37-40-101, 37-40-203, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE IV. See REASON for NEW RULE IV.

24.216.508 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (House Bill 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill was signed by the Governor on May 3, 2023, and will be effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's amendments to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.216.511 NONROUTINE APPLICATIONS

AUTH: 37-1-131, MCA
IMP: 37-1-101, 37-1-131, MCA

REASON: It is reasonably necessary to repeal this rule and ARM 24.216.512 to implement SB 457 which eliminated the board and transferred regulation of sanitarians and sanitarians-in-training to the department. There is no need to incorporate the department's own rules.

24.216.512 APPLICANTS WITH CRIMINAL CONVICTIONS

AUTH: 37-1-131, MCA
IMP: 37-1-101, 37-1-131, MCA

24.216.2102 CONTINUING EDUCATION

AUTH: 37-1-319, 37-40-203, MCA
IMP: 37-1-306, 37-40-203, MCA

REASON: The department is repealing this rule and eliminating continuing education (CE) requirements for registered sanitarians. There is no conclusive proof that requiring CE results in safer sanitarians. Additionally, the majority of Montana licensed sanitarians hold the National Environmental Health Association (NEHA) credential which requires completion of 24 hours of CE every two years. The department believes that licensees will continue to obtain the education and training necessary to maintain high standards of practice.

24.216.2104 INACTIVE STATUS AND CONVERSION FROM INACTIVE TO ACTIVE STATUS

AUTH: 37-1-319, 37-40-203, MCA
IMP: 37-1-319, 37-40-301, 37-40-302, MCA

REASON: It is reasonably necessary to repeal this rule and eliminate inactive status for registered sanitarians. The historically consistent small number of inactive SAN licensees does not justify the staffing and costs associated with monitoring and renewing them.

24.216.2301 UNPROFESSIONAL CONDUCT

AUTH: 37-1-319, 37-40-203, MCA
IMP: 37-1-316, 37-1-319, 37-40-203, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE V. See REASON for NEW RULE V.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., January 5, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and at sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to

P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 26, 2023, by electronic mail.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 28, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.15.102 pertaining to records to be kept	)))	AMENDED NOTICE OF PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 25, 2023, the Department of Livestock published MAR Notice No. 32-23-340 pertaining to the proposed amendment of the above-stated rule at page 860 of the 2023 Montana Administrative Register, Issue Number 16.

2. Upon further consideration of this proposed rule change, the Board of Livestock and the department have chosen to exempt livestock dealers from these requirements and have tailored the brand recording requirements to apply to physical markets only.

3. The proposed rule is being further amended from the original proposal as follows, new matter underlined, deleted matter interlined:

32.15.102 RECORDS TO BE KEPT (1) Each licensed market~~,~~ or livestock video auction~~, or livestock dealer~~ shall keep and maintain a complete and accurate record of all animals purchased and sold, including description of the animal~~, brand or brands carried, if any~~, name of person selling or offering for sale, date of sale, and the name of the person to whom sold. Licensed markets shall also record any brand or brands carried.

(2) Each licensed market~~,~~ or livestock video auction~~, or livestock dealer~~ shall keep and maintain business records showing the following information:

(a) The names of the owners or persons having an interest in the market~~,~~ or livestock video auction~~, or livestock dealer~~.

(b) The names of the managers or operators of the market~~,~~ or livestock video auction~~, or livestock dealer~~.

(c) The names of the owners of the premises upon which the market is located if different than the owners of the licensed market; if a corporation, the names of the directors, officers, and the stockholders, showing their interest in the corporation.

(d) Any contracts or leases executed in connection with the operation of the market~~,~~ or livestock video auction~~, or livestock dealer~~.

(e) The type of organization used in operating the market~~,~~ or livestock video auction~~, or livestock dealer~~ and the members thereof.

(f) If a corporation, the names of the directors, officers, and the stockholders, showing their interest in the corporation.

(3) Records and information must be available for inspection and examination by any authorized agent of the Department of Livestock, Brands Enforcement Division and must be submitted by the licensee upon request. All records used in the purchase and sale of livestock and all records required by this

rule must be kept and maintained by the licensed market~~,~~ or livestock video auction~~, or livestock dealer~~ for a period of not less than 5 years.

AUTH: 81-8-231, MCA
IMP: 81-8-231, 81-8-251, 81-8-264, 81-8-271, MCA

REASON: The department proposes to amend this rule to comply with the revisions of 81-8-213, 81-8-251, 81-8-252, 81-8-264, and 81-8-265, MCA, passed by the Montana State Legislature in 2023 via HB 153 carried by Representative Ler at the request of the department. The changes proposed by the department ensure that those operating sales have the same requirements as physical livestock markets and make payment to consigners at the conclusion of a sale.

Other language has been updated for clarity and conciseness, and implementing statutes have been updated.

4. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on, December 22, 2023, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N Roberts St., Room 304, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9525; fax (406) 444-4316; TDD/Montana Relay Service 1 (800) 253-4091; or e-mail MDOLcomments@mt.gov.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., December 29, 2023.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Director
Department of Livestock

Certified to the Secretary of State November 28, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.87.703, 37.87.903, 37.87.1011, 37.87.1410, and 37.106.1916 pertaining to children's mental health services	)))))	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 3, 2023, the Department of Public Health and Human Services (department) published MAR Notice No. 37-1031 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1528 of the 2023 Montana Administrative Register, Issue No. 21. A public hearing was scheduled for November 27, 2023, via remote conferencing to consider the proposed amendment of the above-stated rules.

2. Due to unforeseen technical difficulties, the hearing was not held. Therefore, the department is issuing this amended proposal notice and rescheduling the public hearing as shown below.

3. On December 28, 2023, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/87616891227?pwd=KzZGSjBDVUtUZUtHYSthM0dTS0VpZz09, meeting ID: 876 1689 1227 and password: 074156; or

(b) Dial by telephone: 646 558 8656, meeting ID: 876 1689 1227, and password: 074156. Find your local number: https://mt-gov.zoom.us/u/k9bywP9zd

4. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 14, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-

9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 5, 2024.

/s/ Brenda K. Elias	/s/ Charles T. Brereton
Brenda K. Elias Rule Reviewer	Charles T. Brereton, Director Department of Public Health and Human Services

Certified to the Secretary of State November 28, 2023.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.2408 pertaining to ballot form and uniformity	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 5, 2024, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., December 22, 2023, to advise of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or email Andrew.Ritter@mt.gov.

3. The rule proposed to be amended is as follows, new matter underlined, deleted matter interlined:

44.3.2408 BALLOT FORM AND UNIFORMITY (1) The Secretary of State's Office adopts and incorporates by reference the "Ballot Layout Guide" dated November 28, 2023, which county election administrators must follow to ensure uniformity of the ballot form for each type of ballot used in the state as required by 13-12-202, MCA. A copy of the Ballot Layout Guide can be accessed on the Secretary of State's website at sosmt.gov. ~~The secretary of state adopts and incorporates by reference the document entitled "Ballot Form and Uniformity Pursuant to 13-12-202 MCA Layout Instructions and Sample Ballots," which is available on the secretary of state's web site at the following link: http://sos.mt.gov/Elections/Officials/Forms/index.asp, updated March 20, 2012.~~

~~(2) The document incorporated by reference is provided to each election administrator and contains guidelines that prescribe the ballot form for each type of ballot used in this state, giving guidelines as to font, spacing, and printed instructions, to conform to the requirements of 13-12-202, MCA.~~

AUTH: 13-1-202, 13-12-202, MCA
IMP: 13-1-202, 13-12-202, MCA

REASONABLE NECESSITY: The proposed changes update the referenced version of the Ballot Layout Guide and clarify the requirement that county election administrators must follow the standards to strengthen the uniformity required by 13-12-202, MCA.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that this proposed rule amendment will not have a fiscal impact.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., January 5, 2024.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 28th day of November, 2023.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to reporting results during an election	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 5, 2024, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., December 22, 2023, to advise of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or email Andrew.Ritter@mt.gov.

3. The rule proposed to be adopted provides as follows:

NEW RULE I REPORTING RESULTS DURING AN ELECTION (1) For an election having at least one statewide race or statewide ballot issue, county election administrators must report results in accordance with 13-15-101, MCA. If the county election administrator has not complied with the reporting requirements in law (13-15-101, MCA), the county election administrator must contact the Secretary of State's office immediately and communicate why they were unable to comply with the law, a description of efforts being made to solve or mitigate the problem, and an estimate of when reporting will begin or resume. County election administrators must also notify the public of the delay.

(2) In the event that a county election administrator is unable to report results as required, the Secretary of State may authorize the county election administrator to publicly post results.

AUTH: 13-15-101, MCA
IMP: 13-15-101, MCA

REASONABLE NECESSITY: During the 68th Legislative Session, the Governor of Montana signed into law House Bill (HB) 196. HB 196 amended 13-15-101, MCA, to authorize the Secretary of State to adopt rules to specify procedures for notifications to the Secretary of State concerning vote total updates and associated delays during the counting of votes. NEW RULE I specifies the elections in which reporting is required and the process for election administrators unable to comply with the same.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that this proposed rule will not have a fiscal impact.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., January 5, 2024.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

8. With regard to the bill sponsor contact requirements of 2-4-302, MCA, the primary bill sponsor, Representative Lyn Hellegaard, was contacted by phone on October 5, 2023, and by email on October 13, 2023.

9. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Austin Markus James
Austin Markus James
Rule Reviewer

/s/ Christi Jacobsen
Christi Jacobsen
Secretary of State

Dated this 28th day of November, 2023.

BEFORE THE GOVERNOR'S OFFICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 14.6.103 pertaining to Sage Grouse Habitat Quantification Tool Designation	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 6, 2023, the Governor's Office published MAR Notice No. 14-8 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1123 of the 2023 Montana Administrative Register, Issue Number 19.

2. The department has amended ARM 14.6.103 as proposed.

3. No comments or testimony were received.

/s/ Anita Milanovich
Anita Milanovich
Rule Reviewer

/s/ Michael Freeman
Michael Freeman
Natural Resource Policy Advisor
Governor's Office

Certified to the Secretary of State November 28, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.182.301, 24.182.401, 24.182.403, 24.182.405, 24.182.407, 24.182.420, 24.182.501, 24.182.505, 24.182.507, 24.182.512, 24.182.514, 24.182.516, 24.182.518, 24.182.520, 24.182.525, 24.182.801, 24.182.804, 24.182.807, 24.182.810, and 24.182.2301 and the repeal of ARM 24.182.101, 24.182.201, 24.182.202, 24.182.421, 24.182.504, 24.182.508, 24.182.509, 24.182.510, 24.182.511, 24.182.513, 24.182.519, 24.182.523, 24.182.813, 24.182.2101, 24.182.2103, 24.182.2105, and 24.182.2108 pertaining to the Board of Private Security	))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 25, 2023, the Department of Labor and Industry (agency) published MAR Notice No. 24-182-36 regarding the public hearing on the proposed changes to the above-stated rules, at page 836 of the 2023 Montana Administrative Register, Issue No. 16.

2. On September 14, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: A commenter said that without the board members' discretion and experience [in the private security industry] to decide non-routine applications, the department staff cannot determine if a probationary license should be granted. This raises a concern that more applications will be denied with a resulting adverse impact on employers.

RESPONSE 1: The Legislature passed Senate Bill (SB) 454 to move regulation of private security from a board to a program. The department has no rulemaking authority to reverse or modify this exercise of legislative power.

Underlying SB 454 transferring a board to a department program is the fact that in Montana and across the United States, professional licensure regulation may occur by staff of state agencies or by a board composed of a combination of public

members and private industry members. Some states do not regulate private security at all.

To the commenter's concerns, the adjudication of nonroutine applications include both lack of qualifications and unprofessional conduct issues. Where it is necessary to prosecute a license denial or a discipline case, board members are conflicted out as expert witnesses before the administrative hearing office. The department prosecutors must hire expert witnesses. This is true for all programs and boards.

Finally, the department anticipates faster processing of nonroutine applications from eliminating the delay for a quorum of the board to meet, with no impact on public safety.

COMMENT 2: A commenter said that repeal of inactive status will result in requiring companies and individuals to maintain expensive insurance if they are temporarily unable to work.

RESPONSE 2: As outlined in the reason for the change in the proposal notice, the burden of offering an at-will inactive to active status outweighs the benefit for only very few individuals. Even if the at-will inactive license is not available, licensees can achieve an inactive status by operation of law. A license that is not renewed will automatically lapse, expire, and terminate after two years. 37-1-141, MCA. The licensee is not required to carry insurance during this inactive time.

COMMENT 3: A commenter said that requiring companies, rather than the department, to produce photo identification cards could be burdensome on a smaller company.

RESPONSE 3: Larger companies are more likely to have more employees and more complex data management, security, or access features associated with their ID cards. The proposal notice referred to these complexities. Relieved of the burden to produce ID cards, the department will no longer pass on costs to all licensees for a redundant and obsolete process, even if the redundancy only applies to some companies.

For companies having fewer employees and less complex ID cards, digital photos, laminating services, or laminating supplies are available at low cost.

COMMENT 4: A commenter said that without a template, photo identification cards created by companies will be inconsistent.

RESPONSE 4: The department will provide a template consistent with ARM 24.182.403.

COMMENT 5: A commenter urged the department to reinsert the term "law enforcement" in ARM 24.182.407(4) in reference to the prohibition on security uniforms, vehicles, or equipment inadvertently resembling those used by any "federal, state, or local agency." It is not clear in the statement of reasonable necessity what "other" agencies may be.

RESPONSE 5: The rule is intended to be broad to prevent confusion or misrepresentation and to ensure that a private security organization does not appear to be affiliated with or endorsed by a government agency when it is not. Government functions including fire protection, public welfare, or public health like law enforcement may have branding that may be confused with law enforcement branding.

"Other" agencies may include other sovereign nations, for example tribal or Canadian agencies. Since this is not clear in the language of the proposed rule, the department will insert "any foreign, tribal, federal, state, or local law enforcement agency..." in the rule.

COMMENT 6: A commenter said that in ARM 24.182.512(1)(c)(iv), the term "any other" in reference to "investigative employment approved by the department..." when counting qualifying experience is vague.

RESPONSE 6: There is no substantive difference between the proposed language and former (5)(a) which recognizes "employment performing investigative related duties . . ." as qualifying experience hours. The department agrees that the phrase is vague and unnecessary and will strike the words "any other."

COMMENT 7: A commenter said that ARM 24.182.512 appears to allow for all 5,400 hours to be met through a college education without any investigative employment experience. This is inadequate to prepare private investigators, and work experience is necessary to serve the public interest.

RESPONSE 7: The department agrees with the comment and will reinsert the limit of 2,700 hours for which training hours may accumulate toward the 5,400-hour total requirement. This will allow for the remaining 2,700 hours to be obtained as a private-investigator trainee in (3) or by the investigative employment in (1).

COMMENT 8: A commenter said that in ARM 24.182.525, removing licensure of branch managers and branch offices may diminish public safety by allowing companies from other states to have employees in the state of Montana without also having a physical presence in the form of an office building or a manager.

RESPONSE 8: The Legislature passed Senate Bill (SB) 454 to deregulate licensure of branch managers and branch offices. The department has no rulemaking authority to reverse or modify this exercise of legislative power.

It is likely that a security company would continue to require local offices and managers as practical necessities. Even if only the employee resides in the state, the business will continue to require to be registered with the Secretary of State and licensed by the department and is subject to disciplinary action for the conduct of its employees.

COMMENT 9: A commenter said that lacking a background in the private security industry, it is unreasonable to expect department staff to interpret provisions of unprofessional conduct at ARM 24.182.2301, e.g., (6), (9), and (10).

RESPONSE 9: Because the Legislature passed SB 454 to move regulation of private security from a board to a program, the issue raised by the commenter cannot be impacted by rulemaking.

Department staff members have a duty to understand, apply, and interpret a profession's laws and rules in whole or in part to carry out their responsibilities. The department will rely on experts to prosecute cases of unprofessional conduct and elicit public comment in rulemaking.

COMMENT 10: Contrary to the department's statement that there will be no significant and direct impact on small businesses, the commenter thinks there will be significant and direct impact on all private security businesses, whether they are large, medium, or small. The commenter does not specify what, how, or why.

RESPONSE 10: The department's small business impact assumptions remain unchanged.

4. The agency has amended ARM 24.182.301, 24.182.401, 24.182.403, 24.182.405, 24.182.420, 24.182.501, 24.182.505, 24.182.507, 24.182.514, 24.182.516, 24.182.518, 24.182.520, 24.182.525, 24.182.801, 24.182.804, 24.182.807, 24.182.810, and 24.182.2301 as proposed.

5. The agency has repealed ARM 24.182.101, 24.182.201, 24.182.202, 24.182.421, 24.182.504, 24.182.508, 24.182.509, 24.182.510, 24.182.511, 24.182.513, 24.182.519, 24.182.523, 24.182.813, 24.182.2101, 24.182.2103, 24.182.2105, and 24.182.2108 as proposed.

6. The agency has amended ARM 24.182.407 and 24.182.512 with the following changes, stricken matter interlined, new matter underlined:

24.182.407 PRIVATE SECURITY GUARD UNIFORM AND PROPERTY BRANDING (1) through (3) remain as proposed.

(4) Uniforms, vehicles, and equipment must not display any accessory, emblem, insignia, patch, seal, or term that is like any used by ~~a~~ any foreign, tribal, federal, state, or local law enforcement agency.

AUTH: 37-60-407, MCA
IMP: 37-60-407, MCA

24.182.512 PRIVATE INVESTIGATOR LICENSE QUALIFICATIONS – TRAINING PERMIT (1) through (1)(c)(iii) remain as proposed.

(iv) ~~any other~~ investigative employment approved by the department that is exempt from private investigator licensure in this state.

(2) Applicants who do not meet the experience requirement in (1)(c) may ~~receive credit for~~ count up to 2,700 hours of training or education as follows:

(a) through (5) remain as proposed.

AUTH: 37-60-202, 37-60-303, MCA
IMP: 37-60-202, 37-60-303, 37-60-304, MCA

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 28, 2023.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.189.301, 24.189.401, 24.189.602, 24.189.610, 24.189.613, and 24.189.614, the adoption of NEW RULES I through X, and the repeal of ARM 24.189.205, 24.189.411, 24.189.415, 24.189.603, 24.189.604, 24.189.607, 24.189.625, 24.189.633, 24.189.901, 24.189.904, 24.189.907, 24.189.910, 24.189.911, 24.189.912, 24.189.913, 24.189.916, 24.189.919, 24.189.922, 24.189.925, 24.189.928, 24.189.931, 24.189.934, 24.189.2101, 24.189.2104, 24.189.2107, 24.189.2301, 24.189.2305, 24.189.2309, 24.189.2314, 24.189.2318, and 24.189.2405 pertaining to the board of psychologists	)	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On October 20, 2023, the Board of Psychologists (agency) published MAR Notice No. 24-189-44 regarding the public hearing on the proposed changes to the above-stated rules, at page 1245 of the 2023 Montana Administrative Register, Issue No. 20.

2. On November 9, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received.

3. The agency has amended ARM 24.189.301, 24.189.401, 24.189.602, 24.189.610, 24.189.613, and 24.189.614 as proposed.

4. The agency has adopted NEW RULES I (24.189.424), II (24.189.640), III (24.189.644), IV (24.189.648), V (24.189.2110), VI (24.189.1604), VII (24.189.1608), VIII (24.189.950), IX (24.189.420), and X (24.189.428), as proposed.

5. The agency has repealed ARM 24.189.205, 24.189.411, 24.189.415, 24.189.603, 24.189.604, 24.189.607, 24.189.625, 24.189.633, 24.189.901, 24.189.904, 24.189.907, 24.189.910, 24.189.911, 24.189.912, 24.189.913, 24.189.916, 24.189.919, 24.189.922, 24.189.925, 24.189.928, 24.189.931,

24.189.934, 24.189.2101, 24.189.2104, 24.189.2107, 24.189.2301, 24.189.2305, 24.189.2309, 24.189.2314, 24.189.2318, and 24.189.2405 as proposed.

BOARD OF PSYCHOLOGISTS
SARA BOILEN, PSY.D., CHAIR

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 28, 2023.

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS
AND AUDIOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.222.401, 24.222.509, and 24.222.904, the adoption of NEW RULES I through IX, and the repeal of ARM 24.222.301, 24.222.502, 24.222.504, 24.222.506, 24.222.510, 24.222.513, 24.222.520, 24.222.525, 24.222.701, 24.222.703, 24.222.706, 24.222.907, 24.222.910, 24.222.913, 24.222.916, 24.222.920, 24.222.2102, and 24.222.2301, pertaining to the board of speech-language pathologists and audiologists	)))))))))))))))))))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On October 20, 2023, the Board of Speech-Language Pathologists and Audiologists (board) published MAR Notice No. 24-222-29 regarding the public hearing on the proposed changes to the above-stated rules, at page 1267 of the 2023 Montana Administrative Register, Issue No. 20.

2. On November 14, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: Several commenters requested the board amend NEW RULE III(3) and (5) to provide an end date to the prior unlicensed experience method of assistant licensure. The commenters asserted that the intent behind 37-15-303(2)(a)(ii), MCA, was to get as many previously unlicensed aides with experience working, but not to continue this licensure avenue "forever."

RESPONSE 1: This comment is outside the scope of this rulemaking as it will take a statutory change to enact a "grandfathering" end restriction on this license method. The board notes that 37-15-303(2)(a)(ii), MCA, (as amended by Senate Bill 300) requires that all experience as unlicensed aides or assistants must be gained prior to January 1, 2024.

COMMENT 2: Several commenters requested the board add 80 hours of supervised clinical experience and 20 hours of supervised professional client services to the assistants' license requirements in NEW RULE III.

RESPONSE 2: This comment is outside the scope of this rulemaking as it will take a statutory change to add clinical and professional experience to the licensure requirements for assistants. Senate Bill 300 (2023) struck these requirements from law.

COMMENT 3: Several commenters requested the board amend NEW RULE III(5) to increase the minimum supervised practical experience to 500 hours and require an American Speech-Language-Hearing Association (ASHA) certified audiologist to supervise.

RESPONSE 3: The board concluded that 110 hours of supervised practical experience is adequate to meet equivalency for the current academic requirements while ensuring public safety. The board determined that supervisors must be current Montana licensed practitioners of the same profession as those supervised. Certification by a professional association is not required.

COMMENT 4: Some commenters suggested amending NEW RULE VII(5)(d) to require licensees retain documentation of a continuing education course's completion date to accommodate asynchronous or self-study courses.

RESPONSE 4: The board agrees and is amending the rule accordingly.

COMMENT 5: Several commenters stated NEW RULE VIII(1)(b) is too broad and suggested the board cite to the scope of practice of the American Speech-Language-Hearing Association (ASHA) or equivalent. Commenters stated the newness of the assistant license will confuse administrators and business owners.

RESPONSE 5: In proposing to repeal ARM 24.222.520 and 24.222.525, the board concluded that it is unnecessary to define or cite a specific set of practice standards. Unprofessional conduct complaints are analyzed in the context of a licensee's specific employment situation, supervision, training, and the specific facts of each complaint, and professional experts are utilized when needed.

COMMENT 6: Several commenters opposed the repeal of ARM 24.222.520 and 24.222.525 and requested the board retain and update the rules to align with ASHA's audiology and speech-language pathology scopes of practice. The commenters believed that requiring adherence to specific scope regulations will ensure practice within an individual's scope and reduce scope infringement by other professions.

RESPONSE 6: The board determined it is not necessary to define or cite a specific set of practice standards. Unprofessional conduct complaints are analyzed in the context of a licensee's specific employment situation, supervision, training, and the

specific facts of each complaint, and professional experts are utilized when needed. The board believes that licensed professionals will practice within their particular training, education, and experience and the profession's generally accepted current standards of practice without requiring a certain code of conduct.

COMMENT 7: Several commenters opposed the repeal of ARM 24.222.703 and 24.222.706 and requested the board retain and update the rules to align with ASHA's audiology and speech-language pathology assistants' scopes of practice.

RESPONSE 7: See RESPONSE 6.

COMMENT 8: Commenters questioned whether applications for assistant licensure will be clear regarding what practical experience is and proving licensees' hours.

RESPONSE 8: This comment is outside the scope of this rulemaking.

4. The agency has amended ARM 24.222.401, 24.222.509, and 24.222.904 as proposed.

5. The agency has adopted NEW RULES I (24.222.540), II (24.222.543), III (24.222.550), IV (24.222.553), V (24.222.410), VI (24.222.415), VIII (24.222.2305), and IX (24.222.420) as proposed.

6. The agency has repealed ARM 24.222.301, 24.222.502, 24.222.504, 24.222.506, 24.222.510, 24.222.513, 24.222.520, 24.222.525, 24.222.701, 24.222.703, 24.222.706, 24.222.907, 24.222.910, 24.222.913, 24.222.916, 24.222.920, 24.222.2102, and 24.222.2301 as proposed.

7. The agency has adopted NEW RULE VII (ARM 24.222.2120) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE VII (24.222.2120) CONTINUING EDUCATION (1) through (5)(c) remain as proposed.

(d) course completion date(s); and

(e) through (8) remain as proposed.

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-306, MCA

BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS
KELSEY MANN, BOARD PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 28, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.435 pertaining to Testing Within the DSA	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 20, 2023, the Department of Livestock published MAR Notice No. 32-23-342 pertaining to the proposed amendment of the above-stated rule at page 1282 of the 2023 Montana Administrative Register, Issue Number 20.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Director
Department of Livestock

Certified to the Secretary of State November 28, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 32.6.201, 32.6.202, 32.6.203, 32.6.204, 32.6.205, and 32.6.206 pertaining to Garbage Feeding	))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On October 20, 2023, the Department of Livestock published MAR Notice No. 32-23-343 pertaining to the proposed repeal of the above-stated rules at page 1284 of the 2023 Montana Administrative Register, Issue Number 20.

2. The department has repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Director
Department of Livestock

Certified to the Secretary of State November 28, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.401 pertaining to Animal Health Division Fees	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 20, 2023, the Department of Livestock published MAR Notice No. 32-23-344 pertaining to the proposed amendment of the above-stated rule at page 1287 of the 2023 Montana Administrative Register, Issue Number 20.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Director
Department of Livestock

Certified to the Secretary of State November 28, 2023.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.11.227 pertaining to contribution limits	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 20, 2023, the Commissioner of Political Practices published MAR Notice No. 44-2-226 pertaining to the proposed amendment of the above-stated rule at page 1394 of the 2023 Montana Administrative Register, Issue Number 20.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Scott Cook
Scott Cook
Rule Reviewer

/s/ Chris J. Gallus
Chris J. Gallus
Commissioner of Political Practices
Office of the Commissioner of Political Practices

Certified to the Secretary of State November 28, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2023. This table includes notices in which those rules adopted during the period June 9, 2023, through November 17, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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MONTANA ADMINISTRATIVE REGISTER

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CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620